19 March 2025

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REF: SHA/26419

APPEAL AGAINST NHS DEVON ICB DECISION TO GRANT AN APPLICATION BY PHARMADERMA LIMITED FOR INCLUSION IN THE PHARMACEUTICAL LIST OFFERING UNFORESEEN BENEFITS UNDER REGULATION 18 AT LEATSIDE HEALTH CENTRE, TOTNES, TQ9 5JA (BEST ESTIMATE)

1 Outcome

1.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner and redetermines the application.

1.2 The Committee determined that the application should be refused.

A copy of this decision is being sent to:

Pharmacy Sales & Consultancy on behalf of Pharmaderma Ltd
Rushport Advisory LLP on behalf of Bestway National Chemists Ltd t/a Well Pharmacy
PCSE on behalf of Devon ICB

NHS Resolution

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1 The Application

By application dated 24 January 2025, Pharmaderma Ltd ("the Applicant") applied to Devon ICB ("the Commissioner") for inclusion in the pharmaceutical list offering unforeseen benefits under Regulation 18 at Leatside Health Centre, Totnes, TQ9 5JA (best estimate). In support of the application it was stated:

1.1 In response to why the application should not be refused pursuant to Regulation 31, the Applicant stated:

1.1.1 "There is no pharmacy in close proximity to the best estimate area."

Supporting information with the application

1.2 "Application by Pharmaderma Limited for inclusion in the Pharmaceutical List of the Devon Health & Wellbeing Board:

1.3 Location: Best estimate area within the vicinity of the Leatside Health Centre as shown on the enclosed map [see Appendix A].

1.4 We act for Pharmderma Limited. In accordance with the NHS (Pharmaceutical Services) Regulations 2013 we would ask the ICB to take into account the following information when considering this application for inclusion in the pharmaceutical list.

1.5 We believe that, should the ICB grant this application, it will secure improvements in terms of access to pharmaceutical services for the local population and the wider area.

Background

1.6 This application has been prompted by a significant reduction in pharmaceutical services provision within this area due to the closure of the Boots pharmacy located at Leatside Health Centre, Babbage Rd, Totnes TQ9 5JA. It is our client's position that the effect of this closure is such that the residents of the town no longer have reasonable access to pharmaceutical services.

1.7 The map below [see Appendix A] shows the location of the recently closed pharmacy highlighted with a red circle. Other pharmacies in the wider area are shown with a red pharmacy icon.

1.8 As can be seen from the map, there were three pharmacies serving the town until very recently. The Boots pharmacy was located within the Leatside Health Centre, which we discuss in more detail below. The other pharmacies serving the town are a branch of Well located on Fore Street (in the town centre) and pharmacy within the Morrisons supermarket.

1.9 The closed pharmacy dispensed an average of 10,241 prescriptions per month for the 3 months to October 2023, the latest month for which data is available (source Pharmdata).

1.10 Based on the England average of around 1.5 prescriptions per person per month, 10,241 items equates to over 6,800 patients who will no longer have access to pharmaceutical services from the pharmacy they have been accustomed to using.

1.11 Furthermore, historically the Boots store opened at 8am, the same time as the first appointment at the co-located medical centre (although in recent times they changed this to 9am to the detriment of the service provided to patients attending appointments before work). Our client will re-instate 8am opening and offers core hours that include this accordingly. This will not only replace the lost service but will improve on it.

1.12 We are aware that the Devon PNA was only published in 2022 and did not identify any gaps in pharmaceutical services provision within the HWB. However, the closure of this Boots pharmacy could not have been foreseen by the authors of the PNA.

1.13 It is our client's position that the closure of this pharmacy is a material change of circumstances in the area and that the benefits our client proposes are therefore unforeseen in the context of the 2013 NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 (as amended).

Local Area

1.14 The proposed location for this application is within the vicinity of the Leatside Health Centre, to the north of the A385 Station Road. As our client has not yet secured premises, the enclosed map [see Appendix A] shows the best estimate of location for this application (marked with a shaded yellow area).

1.15 The area comprises a mix of residential and commercial premises, but most importantly it is the location of the larger of the two medical centres serving Totnes, namely Leatside Surgery.

1.16 The area to the north of Station Road is dominated by a large area of light industrial premises, housing a wide range of industries such as a gym, numerous car mechanics, builders' merchants and a whole host of small independent businesses.

1.17 The area immediately to the west of the surgery is residential, then beyond that is a leisure centre and other sports facilities such as tennis courts and rugby pitches.

Medical Services Provision

1.18 The Leatside surgery has long been located in this 'out of town' area to the north of Station Road due to the lack of suitable sites close to the town centre at the time the surgery was built. The surgery currently serves a patient list of approximately 15,000.

1.19 Patients registered with Leatside Surgery have historically attended the pharmacy collocated with the medical centre as their pharmacy of choice. As a consequence this has always been the busiest pharmacy in Totnes by some way. This applies not only to patients attending an appointment at the medical centre, but also to those collecting repeat prescriptions.

1.20 The popularity of this pharmacy is apparent from the dispensing numbers of the other pharmacies in Totnes. Compared to the average 10,241 items dispensed by Boots Morrisons Pharmacy dispensed an average of 7,473 items per month in the 3 months to October 2023 and Well dispensed only 3,540 items per month.

1.21 The closure of this highly popular pharmacy within this important community setting is a major blow for this population, who no longer have reasonable access to pharmaceutical services when going about their daily lives.

1.22 The only other medical centre in Totnes is Catherine House Surgery, which is located to the south east of the town centre, serves a patient list of 4,600 so is significantly smaller.

1.23 It is relevant to this application, therefore, that medical services provision is concentrated largely to the north of the town centre where the closed Boots branch was located.

Remaining Pharmacy Provision

1.24 Whilst two pharmacies remain in Totnes following the closure of the Boots branch, it is important to be mindful of the combination of accessibility and capacity of these pharmacies following the closure of the busiest pharmacy in the town.

1.25 Pharmacies located on Fore Street in Totnes have historically always been low volume dispensing businesses. This was the case many years ago when Boots owned a branch on High Street close to the Civic Hall and remains the case now for Well, the only pharmacy located in the town centre.

1.26 The key reason for the relatively low use of this pharmacy is accessibility. Totnes town centre is notoriously busy with tourists and other visitors who are attracted by the attractive town centre with its eclectic mix of independent shops. Fore Street / High Street is also on a hill and pavements are narrow, as is the case with many other similar historic town centres.

1.27 As a result of the busy nature of the town and the consequent parking difficulties, local residents are reluctant to access the town centre for their daily needs.

1.28 Furthermore the Well premises are difficult to access for wheelchair users and other patients with limited mobility due to a step into the premises, limited parking options and uneven pavements. It is for these reasons that the Well branch is relatively little used for pharmaceutical services.

1.29 In terms of the Morrisons pharmacy, whilst it is more accessible that [sic] Well, being located within the main supermarket of the town, the pharmacy is physically small and offers a limited range of pharmacy services. For example the pharmacy has historically provided far fewer flu vaccinations than the closing Boots store. Pressure on these premises have been significantly compounded following the Boots closure as they are simply not fit for purpose in respect of coping with the additional dispensing volumes. Long queues at the pharmacy are now commonplace.

1.30 Patients have been reluctant to move to online providers as Totnes is a rural town and has a high proportion of elderly and vulnerable people who rely on bricks and mortar pharmacies for prescriptions and advice and help ordering their prescriptions. The recent well publicised pressures on Royal Mail and proposals to reduce delivery frequency will further erode patient confidence in remote dispensing.

1.31 It is also relevant that, despite the relative proximity of the Morrisons store to the Leatside Surgery on a map, the shortest journey on foot from the surgery necessitates using narrow overgrown footpaths that are not an attractive prospect in the dark in particular. The journey by road, which avoids these footpaths, is more than 500m due to the convoluted route required and the need to extend the route to the west of the roundabout on the A385 to find a safe crossing point.

Demographic profile

1.32 Whilst Totnes is an attractive South Hams town, as with many areas in the southwest of England there are pockets of deprivation.

1.33 The 2019 Index of Multiple Deprivation, published by the Ministry of Housing, Communities & Local Government, shows that the postcode where the closed Boots branch was located is ranked 12,624 out of 32,844 areas in England, where 1 is the most deprived i.e. it is within the top 40% most deprived areas of the country. Within this index there are particular issues around income and employment where the area is within the top 20% most deprived areas of the country.

1.34 2021 census data (source Nomis) relating to the lower super output area South Hams 003A (in which the closed Boots store is located) shows:

1.34.1 23.5% of households have no cars or vans. This is the same as the national average of 23.5%

1.34.2 10.8% of residents describe their day-to-day activities limited a lot through disability compared to the national average of 7.3%

1.34.3 13.1% of residents describe their day-to-day activities limited a little through disability compared to the national average of 10.0%

1.35 It is clear, therefore, that this is an area where many residents do not own a car, there is a significantly higher than average proportion of the population who suffer from disability and levels of income deprivation mean that residents are less able to afford public transport to access amenities in the wider area. In this context the lack of pharmaceutical services provision close to home for these residents causes significant difficulties.

Unforeseen Benefits

1.36 As discussed earlier, within the Devon Pharmaceutical Needs Assessment, published in 2022, there is no specific mention of a gap in pharmaceutical services within the proposed area. Therefore this application is made to provide 'unforeseen benefits' to the local community in accordance with Regulation 18, in response to the further reduction in pharmaceutical services provision since the PNA was published.

1.37 We are required by the ICB to address two specific questions in this supporting information:

(i) "Please describe the unforeseen benefit(s) that you are offering to secure and how it will secure improvements or better access to pharmaceutical services, or pharmaceutical services of a specified type in the HWB area".

(ii) Please explain how you intend to secure the unforeseen benefit(s).

1.38 When considering these questions, it is worth noting the provisions of Regulation 18(2)(b) as highlighted below:

(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also the NHSCB's

duties under sections 13I and 13P of the 2006 Act(b) (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also the NHSCB's duties under section 13G of the 2006 Act(c) (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also the NHSCB's duties under section 13K of the 2006 Act(a) (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

1.39 The implication is that the ICB does not have to find evidence in respect of all three of these matters. These are simply matters it is required to take into account when deciding the application.

1.40 In fact, even if it does not find that any of the three matters discussed in (18)(2)(b) apply, the overarching test is whether granting the application would secure improvements, or better access, to pharmaceutical services in the area of the HWB. In our opinion there is clear evidence that it would.

1.41 We have addressed both of the questions above by setting out in further details below:

Securing better access and choice

1.42 The matters of access and choice are inextricably linked. Whilst it may be the case that there is a choice of pharmacy provider within the Health & Wellbeing Board (HWB) area, this does not mean that the choice for residents is reasonable if they are not able to access these pharmacies when they need to.

1.43 As discussed earlier, taking into account the extent to which this closed Boots pharmacy was used historically, the convoluted journey to Morrisons from the surgery site and the access difficulties to the town centre there is no longer reasonable choice for these residents. The only pharmacies in the vicinity are located well away from the medical centre site. This issue is compounded further when the levels of disability within the area are taken into account.

1.44 If these residents do not have reasonable access to pharmaceutical services then they do not have reasonable choice.

1.45 Many residents of Totnes do not own a car so will be reliant on either walking a significant distance to a pharmacy or incurring costs to travel by public transport. Patients who are elderly or less mobile, particularly when suffering from acute illness, may find this journey challenging regardless of how they travel.

1.46 By approving this application, it is clear that local residents will benefit by having a choice of pharmacy contractor.

1.47 If this application is approved, the applicant will offer the local residents a full and comprehensive pharmaceutical service, ensuring that local residents can, once more, access pharmaceutical services when they need them.

1.48 The services our client proposes to offer are summarised as follows:

1.48.1 Both directors are Independent Prescribers, so when this becomes incorporated into the NHS contract they will be able to consult, prescribe and hold clinics of their own.

1.48.2 They will offer Pharmacy First, the Contraception Service and run hypertension clinics. We understand these services are not offered by Well and Morrisons due to capacity issues.

1.48.3 They will offer a Free Prescription Delivery service. Patients report that Well is at capacity now for deliveries whether patients are housebound or not.

1.48.4 They will offer a Travel Clinic and Tympa Ear Care services complete with microsuction service (paid for). As an example they have conducted 302 ear checks/microsuctions in Okehampton in our first seven months.

1.48.5 They can offer IP Pathfinder if this opportunity is offered to them.

1.48.6 They will offer DPP placements for IPs and can offer two placements for all intakes.

1.48.7 They will offer Primary Care Research and offer pre-registration pharmacist placements.

1.48.8 They will offer Covid clinic if commissioned and offer walk in Covid and Flu vaccines

1.48.9 They will offer smoking cessation.

1.48.10 They will offer weight loss services (NHS and Private).

Patient groups sharing protected characteristics

1.49 For those people who are elderly, less abled or families with very young children (all of which can be classified as having protected characteristics) access to the existing pharmacies is likely to be more difficult than for those who are more able. This would particularly apply if these people are unable to drive or do not have access to a motor vehicle.

1.50 Granting the application will significantly improve the accessibility of pharmaceutical services for these people.

Summary

1.51 In our client's view it can be clearly seen that the residents of this area would benefit greatly from having a community pharmacy reinstated within the area identified. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.

1.52 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors now the Totnes Boots pharmacy has closed, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this area.

1.53 Notwithstanding the fact that there is clearly a geographical gap in the provision of pharmaceutical services resulting from these closures, it is also relevant that when one or more pharmacies close the shortfall in service provision is felt far more acutely by patients than in areas where there has never been any provision.

1.54 We firmly believe if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.

1.55 Finally, our client would wish to attend any oral hearing convened by the ICB to consider this application."

2 **The Decision**

The Commissioner considered and decided to grant the application. The decision letter dated 18 November 2024 states:

2.1 "Devon ICB has considered the above application, and I am now writing to confirm that it has been granted. Please see the enclosed report for the full reasoning."

[Any reference to 'Committee' in this section is not to be confused with the Pharmacy Appeals Committee of NHS Resolution]

Extract from the South West Pharmaceutical Services Regulations Committee (PSRC) decision report of 16 October 2024

2.2 "Name of applicant: Pharmaderma Ltd

2.3 Application type: Application for inclusion in a pharmaceutical list: routine application offering to secure unforeseen benefits.

2.4 Address of proposed premises: Best Estimate – Leatside Health Centre, Totnes, TQ9 5JA.

2.5 The SW Committee noted:

2.5.1 Totnes is a market town and civil parish at the head of the estuary of the River Dart in Devon, England, within the South Devon Area of Outstanding Natural Beauty. It is about 5 miles (8.0 km) west of Paignton, about 7 miles (11 km) west-southwest of Torquay and about 20 miles (32 km) east-northeast of Plymouth. The 2021 census recorded a population of 9,214, an increase from the 2011 census which gave a population of 8,076.

2.5.2 There are currently 2 other pharmacies in Totnes located within a mile of the proposed new pharmacy location. The next nearest pharmacies are in Paignton at 6-7 miles from Totnes.

2.5.3 There was a Boots Pharmacy at Leatside Health Centre until January 24; they closed under the Market Exit process.

2.5.4 The Committee has before it 2 unforeseen benefits applications for the same area to consider together and in relation to each other. Both applicants are aware this is how the SW Committee will consider these cases. The Pharmaderma Ltd application was received first in January 24 and is a best estimate application and the O'Brien Ltd application was received February 2024 and is for premises known. The SW Committee will need to consider the applications to determine if one or more of the applications should be granted. If the SW Committee determines only one should be granted it will need to consider which one should be granted.

PRELIMINARY ISSUES

Summary of Application 1 – Pharmaderma Ltd

2.6 Applicant 1 is proposing to open Monday to Friday 8am – 6pm and Saturday 9am – 12pm, closed Sunday. This would result in 40 Core Hours and 13 Supplementary Hours. The hours proposed are shown below from section 3 of the application form:

Opening hours:

Proposed core opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
0800 – 1200 1400 - 1800	0800 – 1200 1400 – 1800	0800 – 1200 1400 – 1800	0800 – 1200 1400 – 1800	0800 – 1200 1400 – 1800	Nil	Nil	40

Total proposed opening hours

Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Sunday	Total
0800 – 1800	0800 – 1800	0800 – 1800	0800 – 1800	0800 – 1800	0900 – 1200	Nil	53

2.7 The Applicant (1) proposes to provide Essential services, certain appliances, advanced services and enhanced services at section 4 of the application form.

2.8 The Applicant (1) states a copy of the floor plan is not currently available. It is noted the Applicant proposes to provide services requiring the use of a consultation room.

2.9 In the supporting information provided the Applicant (1) describes the unforeseen benefit they are offering to secure, and states the closure of Boots Pharmacy has left a significant gap in pharmaceutical services, concluding:

2.9.1 “In our client’s view it can be clearly seen that the residents of this area would benefit greatly from having a community pharmacy reinstated within the area identified. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.

2.9.2 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors now Totnes Boots pharmacy has closed, especially for those who are on foot, are reliant on public transport, elderly, infirm or disable. There is a gap in pharmaceutical services in this area.

2.9.3 Notwithstanding the fact that there is clearly a geographical gap in the provision of pharmaceutical services resulting from these closures, it is also relevant that when one or more pharmacies close the shortfall in service provision is felt far more acutely by patients than in areas where there has never been any provision.

2.9.4 We firmly believe if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.”

Public Involvement / Representations

2.10 The SW Committee noted full details of the applicant’s proposals were notified to various parties in accordance with the Regulations. Representations have been received from

2.10.1 Community Pharmacy Devon offer views on the regulatory criteria for a Regulation 18 application and note the closure of a pharmacy in an area does not automatically create a gap and if the HWB consider there is a gap the PNA should be updated.

2.10.2 Totnes Town Council support the application noting the reinstatement of a pharmacy in the location will be a huge benefit for those requiring a prescription after a medical appointment.

2.10.3 Well Pharmacy state their pharmacy has coped with the increase in activity since the Boots closure and conclude there is no evidence to support the need for an additional contract in the locality.

2.11 The Applicant (1) responded to the consultation responses offering a reply to each. When comments are circulated to the applicant and interest parties the covering letter states:

2.11.1 Please note that any new information that you submit at this stage will have little or no weight placed upon it unless it can be demonstrated that you are presenting it in response to representations submitted by another party that you believe are not true or are incorrect.

2.12 The SW Committee agreed that it was not necessary to hold an oral hearing to determine the applications.

Regulation 31 (same or adjacent premises) [quoted in full]

2.13 There are no other contractors currently providing pharmaceutical services within the best estimate and premises address provided. The nearest pharmacy is 0.3 miles away – Morrisons Pharmacy. The SW Committee was satisfied it is not required to refuse the application by virtue of Regulation 31.

Controlled Locality Issues

2.14 The application does not relate to a controlled locality but is within 1.6km of a controlled locality.

Unforeseen Benefits

2.15 Reg 18(1)(b) – Improvements or better access not included in the Pharmaceutical Needs Assessment

2.16 Regulation 18 concerns 'Unforeseen Benefits' applications, which are applications where the improvements or better access that would be secured were or was not included in the relevant PNA. The current Devon PNA can be found here: Pharmaceutical Needs Assessment - Devon Health and Wellbeing

2.17 The proposed location is included in the South Hams locality. A locality summary can be found on pages 80 – 85 of the PNA.

2.18 A Supplementary statement to the PNA has been issued for the South Hams locality detailing the closure of Boots Pharmacy, Leatside Health Centre, Totnes on 13 January 2024:

Supplementary statement to Devon Health and Wellbeing Board's
Pharmaceutical Needs Assessment
Pharmaceutical needs assessment published 30 September 2022
Supplementary Statement published January 2024

Details of change

Type of change		*Closure*			
Effective Date		*13 January 2024*			
Company Name		*Boots UK Ltd.*			
Pharmacy Address		*Leatside Health Centre, Babbage Road, Totnes, TQ9 5JA*			
Devon PNA profile area		*South Hams*			
Contractual hours		*40 hours*			
Total 40 core hours		*Total 9.5 supplementary hours*		*Total 49.5 opening hours*	
Monday	*09:00 – 13:00* *14:00 – 17:30*	*Monday*	*13:30 – 14:00*	*Monday*	*09:00 – 17:30*
Tuesday	*09:00 – 13:00* *14:00 – 17:30*	*Tuesday*	*13:30 – 14:00*	*Tuesday*	*09:00 – 17:30*
Wednesday	*09:00 – 13:00* *14:00 – 17:30*	*Wednesday*	*13:30 – 14:00*	*Wednesday*	*09:00 – 17:30*
Thursday	*09:00 – 13:00* *14:00 – 17:30*	*Thursday*	*13:30 – 14:00*	*Thursday*	*09:00 – 17:30*
Friday	*09:00 – 13:00* *14:00 – 17:30*	*Friday*	*13:30 – 14:00*	*Friday*	*09:00 – 17:30*
Saturday	*-*	*Saturday*	*09:00 – 16:00*	*Saturday*	*09:00 – 16:00*
Sunday	*-*	*Sunday*	*-*	*Sunday*	*Closed*
In additional to essential pharmaceutical services, the pharmacy provided the following locally commissioner services: - *EHC/Chlamydia combined consultation* - *Chlamydia Grab Box Service* - *Needle Exchange* - *Supervised Consumption* - *Smoking cessation*					

This supplementary statement to
Devon's Pharmaceutical Needs Assessment is issued in accordance with Section 6(3) in Part 2 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013
Supplementary statement issued by:
The Public Health Intelligence Team on behalf of Devon's Health and Wellbeing Board

2.19 The SW Committee was satisfied that as the improvements or better access which the applicants are proposing to secure were not identified in the PNA, an 'unforeseen benefits' application is the correct type of application.

Reg 18(2)(a) – Would granting the application cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services in this area

2.20 The ICB has no particular plans regarding pharmaceutical services in the area and no issues were raised in the consultation responses, so there can no detriment to such plans [sic].

2.21 Well Pharmacy response states they coped with the sudden increase at the time of exit, but do not address the patient comments or provide any evidence about the impact this application (if granted) would have on the viability of their service. Morrisons did not comment. There was no other suggestion that there would be significant detriment to the arrangements already in place.

2.22 The SW Committee was satisfied that granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services.

Regulation 18(2)(g) – Whether the application presupposes that a gap in pharmaceutical services provision has been or is to be created as a result of a consolidation application 28.

2.23 As no consolidation applications have been made relating to this area the SW Committee was not required to refuse the application under regulation 18(2)(g).

Reg 18(2)(b)(i) – Significant benefit: Reasonable choice with regard to obtaining pharmaceutical services

2.24 The SW Committee noted a map showing the location of existing pharmacies in the area and maps showing travel routes to the nearest pharmacy on foot and by car and bus.

2.25 The SW Committee noted information on the opening hours of the nearest pharmacies to the proposed new pharmacy site within 7 miles.

2.26 The Pharmaderma application states the closure of the Boots Pharmacy has caused difficulties for patients who wish to access pharmacy services particularly after visiting the surgery. They suggest the loss of the Boots, along with claims of poor and slow service and difficulty in accessing the 2 remaining pharmacies, has led to a lack of choice. They suggest a significant number of households do not have access to a car and provide various demographic information.

2.27 The O'Brien application includes various letters in support of their application. They highlight advantages of a pharmacy being co-located with the surgery and refer to patient dissatisfaction with services from the other pharmacies. They discuss a lack of provision of services such as pharmacy first from the remaining pharmacies. They suggest the PNA found no gaps when there were 3 pharmacies and so now there are 2 there will be gaps in services.

2.28 Both applicants suggest remaining pharmacies are struggling to cope with the demand left since Boots Pharmacy closed and both point out the support for a pharmacy at the Health Centre from patients.

2.29 Well oppose both applications, stating the closure of a pharmacy does not automatically create a gap. They highlight their pharmacy is only a short distance away and state the pharmacy has coped with a large increase in demand subsequent to the exit of the Boots. Their response does not, however, clarify whether patient feedback regarding long waits etc, has now been addressed and whether they have sought recent feedback from their patients.

2.30 Those in support of the application note the loss of the Boots Pharmacy and note the high dispensing volumes (50%) suggesting this is evidence it was a well-used pharmacy. The patient comments express the need for a pharmacy at the Health Centre and suggest the demand will increase due to proposed expansion of housing in the area. Some activity data for the closed Boots is shown below.

Contractor code	FT764
Row labels	Sum of Total dispensed Items
202304	9907
202305	9958
202306	11073
202307	10409
202308	10787

202309	10486
202310	9751
202311	9762
202312	7210
200401	999
200402	1
Grand total	90043
Contractor code	FT764
Row labels	Sum of CPCS consultations
202304	12
202305	0
202306	18
202307	10
202308	4
202309	3
202310	2
202311	4
202312	5
200401	1.071428571
200402	0
Grand total	59.07142857

2.31 The SW Committee noted both a Morisons and Well pharmacy are available within Totnes.

2.32 The SW Committee is of the view that the health and wellbeing board issuing a supplementary statement does not draw a conclusion around need. The issuing of a supplementary statement clarifies that there has been a change to the baseline position since the PNA was written and it may be relevant to pharmacy market entry applications.

2.33 The SW Committee noted the applicant has concluded that as the PNA says there is adequate pharmacy provision with three pharmacies, the recent closure of one of the pharmacies means there is a gap. The SW Committee was of the view that it is not possible to know what the conclusion of the PNA would have been if there were two pharmacies, as PNA only assessed the position at the time of writing.

2.34 The SW Committee noted that the Well pharmacy in Totnes is located within the town centre, at the bottom of a hill, with limited parking spaces, making it more difficult to access. The Committee noted the Morrison is outside of town, closer to the proposed site, allowing for better accessibility by car.

2.35 The SW Committee noted the publics' concerns around the closure of the Boots pharmacy. There were a number of comments included in the supporting information for the O'Brien application apparently collated by the Community Engagement Team at Totnes Caring. Patient comments highlighted increase waiting times at the remaining pharmacies, however, it appears these were collected in February so soon after the Boots exit when we would expect some disruption, as patients seek a new pharmacy and pharmacy teams review the capacity needed to respond to demand. It was less clear whether this was the more recent experience of patients. The SW Committee noted that in the months following the closure concerns raised with the Pharmacy Team reduced. The SW Committee was mindful that it was well known there are applications for a new pharmacy and that may have affected whether patients continued to raise concerns.

2.36 The SW Committee noted the lower levels of activity at the Well (16%) and Morisons (34%) pharmacies in Totnes compared to the Boots (50%) before it exited.

2.37 Redistributing this workload across the remaining sites will have been challenging for these teams, however, the SW Committee again noted neither pharmacies had provided evidence that they had now addressed patient concerns.

2.38 The SW Committee noted that the Well Pharmacy likely gains most of its activity from visitors, as it is on the busy high street that can be difficult to get to especially during the holiday season. The SW Committee also noted that it is 6 miles or more to find a pharmacy outside of Totnes.

2.39 The SW Committee considered whether the reports of difficulties in gaining access to the existing pharmacies due to lack of capacity in Totnes resulted in a lack of patient choice and difficulty in accessing services. Whilst Well pharmacy state they are coping well with the increased demand, but do not evidence this, Morrisons have not responded.

2.40 The SW Committee noted that the Morrisons is fairly close (0.3miles) to the proposed site and noted that in the dark the walk (shortest route) down the tree/hedged lined paths would likely be unpleasant. The alternative route, walking on pavements by the roads, was only slightly longer but did involve crossing the busy A385/Station Road (light controlled), then crossing Station Road again (Zebra crossing), heading into Coronation Road, which then had to be crossed to reach Morrisons. This last crossing is neither light controlled nor is it a zebra crossing rather there are just dropped kerbs and an island in the middle of Coronation Road. The SW Committee felt that though the distance is fairly small when taking the alternative route, the number of crossings would present challenges for those not using public transport or cars to access the pharmacy.

2.41 The SW Committee noted the former Boots had been a busy pharmacy, dispensing a relatively large number of prescriptions. The Committee concluded that patients had been choosing to go to Boots because that suited them and was of benefit to them. The SW Committee also concluded that the difficulties in accessing the remaining pharmacies in Totnes, due to service delivery delays and challenges in accessing the premises, combined with a large distance to any pharmacy outside of Totnes, was evidence that a new pharmacy would provide improvements in the accessibility and choice of pharmaceutical services.

2.42 The SW Committee concluded that because of the accessibility and proximity of the existing pharmacies by car or by bus that granting the application would confer a significant benefit by way of access to, or choice of, pharmaceutical services.

Reg 18(2)(b)(ii) – Significant Benefit: Patients with a protected characteristic

2.43 Little information has been provided by any party on this matter.

2.44 The SW Committee was of the view that granting the application would not confer significant benefits on people sharing a protected characteristic.

Reg 18(2)(b)(iii) – Significant Benefit: Innovative approaches to delivery of pharmaceutical services

2.45 No information has been provided by any party on this matter.

2.46 The SW Committee is of the view that granting the application would not lead to significant benefits by virtue of innovation.

Overall Recommendation

2.47 The SW Committee was of the opinion that a new pharmacy was necessary but there was no evidence to suggest 2 were needed. The SW Committee concluded one application SHOULD be GRANTED as conferring a significant benefit.

One application is granted.

2.48 The Pharmaderma application, due to the distribution of core hours, guarantees earlier opening and closing times weekdays and overall propose 53 as opposed to 51 hours of opening. O'Brien offers later closing time weekdays and Saturdays though that is by supplementary hours. Both only offer 40 core hours.

2.49 Pharmaderma's application is for a best estimate while O'Brien specifies an address and indicates a lease would be arranged with the surgery if the application is successful. The comments from the surgery suggest that there is an agreement for premises though there is no formal documentation included. Services offered appear to be very similar.

2.50 The SW Committee noted the Devon ICB has conducted a patient survey as part of their pharmacy strategy asking what pharmacy opening hours were preferred. Feedback indicates increased evening (16:00-18:00 & 18:00-20:00) hours were preferable.

2.51 Pharmaderma offers core evening (18:00 core closing) and early morning (8:00 core opening) hours. The O'Brien application did offer later weekday opening but that was by way of supplementary hours, which could be changed at any time by giving notice.

2.52 The O'Brien core hours only went until 17:30 weekdays. The SW Committee was of the view that this was an advantage of the Pharmaderma application, as they could not just give notice to reduce the evening opening hours.

2.53 The SW Committee noted that even though Pharmaderma has not secured the surgery premises, they have offered a broader footprint in case they are unable to secure these premises. It was noted O'Brien have begun discussions with the surgery. The SW Committee reflected that arrangements between landlords and tenants are commercial matters to be resolved once a license is granted.

2.54 The SW Committee determined to grant the Pharmaderma Ltd application, due to better offering of opening hours.

Regulation 66 – conditions relating to providing directed services

2.55 The applicants have given an undertaking to provide a number of directed services. Therefore, it should be a condition of the granting of the application that the contractor must provide those services if commissioned, and not withhold agreement to a service specification for those services unreasonably.

2.56 The proposed pharmacy is located within a non-controlled locality, however, there is a controlled area affected within a 1.6km radius around the proposed pharmacy. Therefore, the impact on any dispensing patients in the controlled locality area was considered.

2.57 Details of how many dispensing patients affected are displayed in the following table:

Practice	Dispensing	Non-Disp	Disp	Disp within 1.6km
Ashburton Surgery	Yes	4231	2916	6
Kingskerwell & Ipplepen Medical Centre	Yes	7931	4037	8

Modbury Health Centre	Yes	2242	2676	2
			TOTAL	16

2.58 Chapter 32 of the Manual states:

> *Periods of gradualisation should generally be no shorter than one month and, other than in exceptional circumstances, should last no longer than three months.*
>
> *Exceptional circumstances may include:*
>
> *• the loss by a dispensing practice of all its dispensing patients,*
>
> *• where the reduction in the number of dispensing patients would lead to staff changes or redundancies, or*
>
> *• where there is only one pharmacy within a 1.6km of the practice premises and that is the pharmacy that is opening and its ability to absorb former dispensing patients effectively needs to be staged over time.*

2.59 No party has made any representations on the matter of gradualisation. The number of affected patients is small and none of the surgeries will be significantly affected. The SW Committee determined a period of 1-month gradualisation for the removal of patients from the practice dispensing lists when the pharmacy opens was appropriate.

Appeal Rights

2.60 The SW Committee determined that the following practices have appeal rights against the gradualisation decision: Ashburton Surgery, Kingskerswell & Ipplepen Medical Centre, Modbury Health Centre?

2.61 It was agreed that, as the Pharmaderma Ltd application is granted, O'Brien Ltd and Well should be granted appeal rights, as they provided reasoning for opposing the application. Morrisons pharmacy is not granted appeal rights."

Contained within the papers, as received from the Commissioner, was a copy of a site visit report dated October 2024, see Appendix B. In the interests of transparency and fairness, NHS Resolution had circulated a copy of the site visit report to all parties when the appeal was circulated.

3 The Appeal

In a letter dated 16 December 2024 addressed to NHS Resolution, Rushport Advisory LLP on behalf of Bestway National Chemists Ltd t/a Well Pharmacy ("the Appellant") appealed against the decision. The grounds of appeal are:

3.1 "I act for Bestway National Chemists Ltd trading as Well Pharmacy and have been instructed by my client to submit this appeal against the decision of the Commissioner to approve the above application. The decision was communicated to my client by letter dated 18 November 2024.

Basis for the Appeal

3.2 Upon reading the Commissioner's Decision Report and the Applicant's application, it is clear that the Commissioner has applied the wrong legal test. The Decision Report in particular proceeds on the basis of considering whether it would be better overall if Boots at Leatside Health Centre had not closed and whether it should be replaced.

3.3 It is not surprising that some patients would have preferred if Boots had not closed as they were using it to access pharmaceutical services, but the closure of Boots does not itself create any gap in pharmaceutical services provision that can be filled by the grant of this (or any other) application.

3.4 The incorrect approach taken by the Commissioner is manifest in a number of areas of the Decision Report which we highlight below.

3.5 Paragraphs 1 to 38 of the Decision Report are uncontentious and set out the background to the application.

3.6 Paragraph 39 describes the Well Pharmacy in Totnes as being

"located within the town centre, at the bottom of a hill, with limited parking spaces, making it more difficult to access."

3.7 It is correct that Well Pharmacy is located within the town centre. Fore Street is the main commercial centre of Totnes and is where those who are accessing shopping facilities and other services would travel to in the course of their normal daily lives. Fore Street has parking available along its length with a disabled parking bay directly outside Well Pharmacy.

3.8 Whilst there is parking available directly outside Well Pharmacy, the main car park at Victoria Street is a 300 metre / 4 minute walk from Well Pharmacy. Victoria Street car park is a short stay car park (3 hours maximum) costing £1.20 for 1 hour (£2.80 for 3 hours) with multiple disabled bays. [see Appendix C].

3.9 It is not clear why the Commissioner has ignored the existence of not just this car park but other car parks and parking areas within a short distance of Well Pharmacy.

3.10 Fore Street is very well used by residents and visitors alike. What this means is that Well Pharmacy is perfectly located to be available to those who choose to access a pharmacy whilst also accessing other services.

3.11 The journey from Leatside Surgery to Well Pharmacy by car takes 2 minutes.

3.12 The Decisions Report then states;

"The Committee noted the Morrison is outside of town, closer to the proposed site, allowing for better accessibility by car"

3.13 It is debatable whether Morrisons offers "better accessibility by car", but what it does offer is easy, on-site parking for those who choose not to access the town centre. The journey by car from Leatside Surgery to Morrisons takes 3 minutes.

3.14 The above shows that there is easy access by car to a reasonable choice of pharmacies within a short distance of the application site.

3.15 The Commissioner then states;

"The SW Committee noted the publics' concerns around the closure of the Boots pharmacy. There were a number of comments included in the supporting information for the O'Brien application apparently collated by the Community Engagement Team at Totnes Caring. Patient comments highlighted increase waiting times at the remaining pharmacies, however, it appears these were collected in February so soon after the Boots exit when we would expect some disruption, as patients seek a new pharmacy and pharmacy teams review the capacity needed to respond to demand. It was less clear whether this was the more recent experience of patients. The SW Committee

noted that in the months following the closure concerns raised with the Pharmacy Team reduced. The SW Committee was mindful that it was well known there are applications for a new pharmacy and that may have affected whether patients continued to raise concerns."

3.16 It is unsurprising that patients would have been concerned about the closure of the pharmacy that they had previously used. Similarly, it is not surprising for the remaining pharmacies to have to adjust to the closure. Nothing about this merits the granting of this new application.

3.17 The 'concerns' raised by the patients all came within the first few months of the Boots closure. Throughout this period, both Well and Morrisons were in regular contact with the Commissioner and addressed all concerns that were raised.

3.18 Aside from service delays immediately after the Boots closure (which the Commissioner has acknowledged were to be expected) there are no service delays within the town, no gaps in provision either by day or by hour and the Applicant is offering no additional NHS services than are currently being provided by the existing two pharmacies.

3.19 The Committee then states,

"The SW Committee noted the lower levels of activity at the Well (16%) and Morisons (34%) pharmacies in Totnes compared to the Boots (50%) before it exited. Redistributing this workload across the remaining sites will have been challenging for these teams, however, the SW Committee again noted neither pharmacies had provided evidence that they had now addressed patient concerns."

3.20 It is unclear why the Commissioner feels that my client or Morrisons should be expected to prove a negative, ie to provide that they do not have patient concerns. Instead, the Commissioner has already noted that patient concerns had reduced in the months following Boots closure and should have been cognisant of its own evidence.

3.21 The Committee then states;

"The SW Committee noted that the Well Pharmacy likely gains most of its activity from visitors, as it is on the busy high street that can be difficult to get to especially during the holiday season. The SW Committee also noted that it is 6 miles or more to find a pharmacy outside of Totnes."

3.22 This statement is simply incorrect. Well Pharmacy's patients are mainly those who live in Totnes. Well Pharmacy is also well placed to provide services to visitors during summer months due to its town centre location. The Commissioner finds that Well Pharmacy can be difficult to get to because the area of Fore Street can be busy, but seems to ignore the fact that it can be busy because so many people are in fact able to access it.

3.23 Well Pharmacy currently has 4954 patients nominated to it and Morrisons has 6505. Morrisons tends to achieve more nominations from people who live further out of Totnes, but both pharmacies are serving mainly Totnes residents. Well Pharmacy has done this throughout the summer period and the prescription items numbers have remained constant through that season and through to the present.

3.24 The Commissioner then states;

"The SW Committee noted that the Morrisons is fairly close (0.3miles) to the proposed site and noted that in the dark the walk (shortest route) down the tree/hedged lined paths would likely be unpleasant. The alternative route, walking on pavements by the

roads, was only slightly longer but did involve crossing the busy A385/Station Road (light controlled), then crossing Station Road again (Zebra crossing), heading into Coronation Road, which then had to be crossed to reach Morrisons. This last crossing is neither light controlled nor is it a zebra crossing rather there are just dropped kerbs and an island in the middle of Coronation Road. The SW Committee felt that though the distance is fairly small when taking the alternative route, the number of crossings would present challenges for those not using public transport or cars to access the pharmacy."

3.25 Here, the Commissioner is accepting that Morrisons is "fairly close" to the application site and that there are multiple available walking routes. One route avoids traffic and main roads, whilst another has light controlled or zebra crossing points available.

3.26 The shortest route is shown below [see Appendix C] and involves using the cycle and pedestrian path for a total of 188 metres.

3.27 Alternatively, should a patient have walked to the medical centre and wishes to walk to a pharmacy without using this path then the walk is 7 minutes and 0.3 mile to Morrisons as shown below [see Appendix C].

3.28 The Commissioner states that;

"This last crossing is neither light controlled nor is it a zebra crossing rather there are just dropped kerbs and an island in the middle of Coronation Road. The SW Committee felt that though the distance is fairly small when taking the alternative route, the number of crossings would present challenges for those not using public transport or cars to access the pharmacy."

3.29 does not and cannot explain why such a walk on foot with light controlled crossing points and a zebra crossing at any major road is in any way difficult for those who choose to walk. [sic]

3.30 The Coronation Road crossing referred to by the Commissioner is shown below [see Appendix C] and is perfectly adequate for the nature of the road.

3.31 However, should a patient wish to use a light controlled crossing then they can do so by walking 72 metres further along the road and using the crossing shown [see Appendix C].

3.32 It is unclear what part of the journey on foot that the Commissioner believes is difficult and those who choose to access the medical centre on foot will have made the same journeys in reverse to get there in the first place.

3.33 The above shows that there is easy access on foot to a reasonable choice of pharmacies within Totnes.

3.34 Access by Bus

3.35 It is notable that the Commissioner determines that access to pharmacies via public transport is poor, without ever considering access by public transport. The Applicant likewise makes no mention of access by public transport to any pharmacy.

3.36 Despite this the Commissioner states at para 46;

"The SW Committee concluded that because of the accessibility and proximity of the existing pharmacies by car or by bus that granting the application would confer a significant benefit by way of access to, or choice of, pharmaceutical services."

3.37 In fact, there are multiple bus services from the area around Leatside Surgery to both Morrisons and the town centre shops where Well Pharmacy is located. These routes include B1B, B2F, Gold Service, 88 and 167 with overlapping service times providing regular and frequent access to both Well and Morrisons.

3.38 It is not clear why access by bus has been ignored and even less clear how the Commissioner could reach a determination that related to accessing pharmacies by bus when there was no consideration given to it by either the Applicant or the Commissioner.

3.39 The above shows that there is good access to a reasonable choice of pharmacies within Totnes using public transport.

General Points

3.40 Leatside Surgery is situated in a mainly commercial part of Totnes on the edge of an industrial estate. Apart from approximately 40 homes in the small residential area opposite the surgery, almost all of the rest of Totnes lives closer to either Well or Morrisons that they do to the surgery.

3.41 My client's experience is that almost all patients drive to the surgery, but some do walk or use public transport. As we have demonstrated above, all of those patients have easy access to a choice of pharmacies following a visit to the surgery. It is notable that patient complaints referred to in the Commissioner's Decision Report focussed on delays in service after the Boots closure rather than the location of the pharmacies in Totnes and the service issues have now been resolved.

3.42 Totnes Ward, which includes all of Totnes as well as Follaton to the west and the Bridgetown area to the east, had a population of 9,030 in 2022 and this is a relatively small population for 2 pharmacies to serve.

3.43 As shown below [see Appendix C], Well now dispenses just over 8,000 items per month, which is not particularly busy, especially at the current time when smaller pharmacies are at high risk of closure.

3.44 Morrisons dispenses approximately 8,700 items per month, which is also not large volume. Notably Morrisons saw a smaller increase in item numbers after the Boots closure.

3.45 Neither of these are high volume pharmacies. Neither is unable to cope with their current demand. The larger percentage increase as Well versus Morrisons also shows that patients were happy to access Well rather than Morrisons even though Morrisons is considered easier to access by the Commissioner."

4 Summary of Representations

This is a summary of representations received on the appeal.

4.1 THE COMMISSIONER

4.1.1 "Thank you for your letter, received 6th January 2025, addressed to Mr [S] at Primary Care Support England (PCSE) enclosing a copy of the appeal as detailed above. The South West Pharmaceutical Services Regulations Committee (SW Committee) wishes to make the following comments on the appeal.

4.1.2 The SW Committee would respectfully suggest that, following closure of Boots pharmacy at the Leatside Health Centre, choice in the locality has reduced.

The activity at the Boots pharmacy that closed is evidence that patients chose to use and valued services from that pharmacy. In July 2023 the Leatside Surgery produced 17,988 prescriptions. Of these Boots pharmacy dispensed just under 54% of the prescriptions, Morrisons 19.5% and Well 7%. The 3 pharmacies in Totnes, therefore, dispensed about 71% of the prescriptions. In July 2024 (with the Boots now closed) the surgery produced 18,162 prescriptions, with Morrison dispensing 32% of those and Well 32.5%, meaning the pharmacies in Totnes dispensed about 64.5% of the total. While the volume at Morrison and Well are much higher than 12 months previously, it is still a noticeably smaller proportion than before. The SW Committee would respectfully suggest this may be a sign the remaining pharmacies in Totnes are not considered, by a noticeable proportion of patients that were used to making use of Boots pharmacy, as a reasonable alternative.

4.1.3 The SW Committee would wish to point out that Totnes is in a tourist area and can get very busy with visitors in the summer months and this makes accessing, especially parking, on Fore street challenging. This also makes the Morrisons car park very busy.

4.1.4 The SW Committee respectfully requests that the decision to approve the application is upheld."

4.2 PHARMACY SALES & CONSULTANCY ON BEHALF OF THE APPLICANT

4.2.1 "Thank you for your letter dated 6th January 2025 enclosing the above appeal.

4.2.2 We continue to act for Pharmaderma Limited and wish to make representations on our client's behalf in response.

4.2.3 Our client submitted the above application in March 2024, pursuant to Regulation 18 of the NHS (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("The Regulations"). The application was approved by the South West Pharmaceutical Services Regulations Committee ("PSRC"), acting on behalf of Devon ICB in October 2024, and our client was notified of that decision on 18th November 2024.

4.2.4 For the reasons set out below, we invite the Primary Care Appeals Committee ("The Committee") to reach the same conclusion as the PSRC and grant this application.

The ICB Decision

4.2.5 The Committee will have been provided with a copy of the PSRC report in respect of its meeting of 16th October 2024.

4.2.6 We wish to point out the following extracts from this report. Please note that 'applicant 1' refers to our client and 'applicant 2' refers to another application that was considered together with, and in relation to, our client's application at that time.

4.2.7 [PSC quote extracts from the decision letter as set out at section 2 above, paragraphs 2.6, 2.10, 2.20, 2.22, 2.32, 2.34 to 2.42 as well as quoting, in relation to Applicant 2 "*Leatside Surgery support the application and provide reasons for the need for an additional pharmacy in Totnes"*]

4.2.8 The PSRC then went on to consider, having received two applications, there was a need for only one application to be granted, and it preferred our client's application on the basis of better opening hours. As the other party has not

appealed the decision, this point is raised as background information only, as the Committee is required to consider our client's application only.

Premises

4.2.9 By way of further background information, the Committee will note that our client's application is for a best estimate area whereas 'applicant 2', discussed above, made its application in respect of specified premises, namely Leatside Surgery.

4.2.10 When it was preparing its application, our client engaged with the partners at Leatside Surgery, but at that time 'applicant 2' had already agreed lease terms for the premises, so the partners proactively supported this other application.

4.2.11 It was agreed at that time, however, that should our client's application be approved preferentially, the practice would wish to enter into discussions with our client regarding a lease for the former Boots premises. As will be apparent from the support our client has subsequently received from the practice (discussed below), terms have now been agreed and it is intended that if this application is approved the pharmacy will open at the medical centre site.

4.2.12 For the avoidance of doubt our client's best estimate area included the surgery premises.

The Appeal

4.2.13 We now wish to address the comments made by Rushport Advisory LLP on behalf of the appellant that form the basis for the appeal. We address these in the same order they are raised in the appeal letter dated 16th December 2024.

Basis for the Appeal

4.2.14 We disagree with the appellant's assertion that the PSRC proceeded on the basis of considering whether it would be better overall if Boots at Leatside Health Centre had not closed.

4.2.15 It is clear that the PSRC considered each of the matters it was required to have regard to in respect of an application submitted under regulation 18, and its findings on the relevant tests in regulation 18 are clearly set out in the decision report. Regardless, the Committee will consider this matter afresh rather than by considering the approach taken by the PSRC.

4.2.16 Furthermore, our client disagrees with the appellant's suggestion that the closure of the Boots pharmacy did not create a gap in pharmaceutical services provision. We have provided evidence previously as to why this is the case and we provide additional information and evidence with this appeal response.

4.2.17 The appellant goes on to set out its position as to why it believes that the approach taken by the PSRC was wrong.

Location of Well Pharmacy

4.2.18 There is no dispute between the parties that the Well Pharmacy is located within the town centre. It is precisely for this reason that there can be access issues for patients who wish to use this pharmacy.

4.2.19 As residents of, and visitors to, Totnes are aware, it is an incredibly busy tourist destination. Whilst the peak of the tourist season is in the summer months, like

many parts of the South West there is increasingly a significant tourist population throughout the year. Totnes is also the main town serving a significant rural population so is used as a shopping destination by the residents living in villages around the wider area. The ICB, who clearly benefit from local knowledge, are fully aware of the busy nature of the town.

4.2.20 Whilst the appellant forms the view that patients would use Fore Street "in the course of their normal daily lives" that is not, in fact, the case. Many people will avoid travelling to the area in the course of their daily lives if they can possibly avoid it because the area is so busy. The effect of the busy nature of the town is that parking can be very difficult and Fore Street can become very congested for pedestrians who crowd on to narrow pavements.

4.2.21 In respect of parking on Fore Street, there is limited parking along its length. This limited space does not span anywhere near the entire length of the street and approximately 50% of this space is not available due to being loading or 'car club only' bays. Fore Street / High Street is 0.4 miles long with only 32 spaces and 7 disabled spaces available serving 177 businesses and two churches.

4.2.22 In fact, at the present time (for a 3-month period from 2nd January to 31st March 2025), Fore Street is closed to motor vehicles. This can be seen in the images below [see Appendix D]. There is currently no parking on Fore Street at all and, during the course of our recent visit, whilst the disabled parking space outside Well had not been fenced off, the road was impassable for any vehicles as it was blocked by heavy machinery at both ends.

4.2.23 It is also noteworthy that the pharmacy was recently closed due to flooding. The sign below was placed on the pharmacy door at that time:

4.2.24 Our client has been informed that this is a reasonably regular occurrence due to long term unaddressed maintenance issues. Whilst any pharmacy can experience 'force majeure' events, this is less excusable when the same issue arises repeatedly. This is a further example of the fragility of service provision in the town.

4.2.25 Whilst there might be some logic to the appellant's comments that residents and visitors who find themselves in Fore Street already to access other services would also be able to access the Well pharmacy branch, many patients have no need or desire to use Fore Street when they require pharmaceutical services.

4.2.26 Furthermore, the appellant's suggestion that this pharmacy is "perfectly located" does not appear to be borne out by the historical dispensing data. Prior to the closure of the Boots pharmacy, Well dispensed no more than 15-20% of the prescriptions being dispensed by the three Totnes pharmacies. If this pharmacy was optimally located, it would be expected to be the busiest, not the quietest Totnes pharmacy.

4.2.27 It is also interesting to note that Well pharmacy does not open on Saturdays at all. Bearing in mind the appellant's assertion that the pharmacy is perfectly located in the heart of the town's commercial centre, it would be expected that the pharmacy would be very busy on Saturdays. It is somewhat surprising, therefore, that Well deem there is no need for the pharmacy to open. This would appear to be because the location is not where residents and visitors wish to access their pharmaceutical services.

4.2.28 We provide additional evidence later regarding the parking and general access issues.

Location of Morrisons Pharmacy

4.2.29 The appellant goes on to discuss Morrisons and mentions the “on-site parking for those who choose not to access the town centre”.

4.2.30 Remarkably in a town where parking is challenging, Morrisons car park is the only one in the town that provides free parking for up to 2 hours. This is not restricted to Morrisons shoppers as can be seen on the car park signage below.

4.2.31 Given that the supermarket is located less than 200m from Fore Street, it is not surprising that this car park fills up very quickly. At peak times it is common for cars to be queuing to get into the car park, and many motorists will leave without being able to park.

Service levels

4.2.32 The appellant then goes on to discuss the comments from the PSRC in respect of poor service levels at the remaining two pharmacies in Totnes.

4.2.33 The suggestion made by the appellant is that the issues which had arisen in terms of service levels were limited to the first few months following the closure of the Boots pharmacy. It claims that “both Well and Morrisons were in regular contact with the Commissioner and addressed all concerns that were raised”.

4.2.34 It is not clear whether Rushport have been instructed by Morrisons to represent them and, if they have, what information Morrisons have supplied in respect of ‘addressing concerns’ and communication with the Commissioner.

4.2.35 Whilst the burden of proof, to the extent this exists, rests with the applicant generally, it is also incumbent on other parties who have an interest in the application to provide their own evidence if they wish to challenge information submitted by the applicant.

4.2.36 In this case, clear evidence was provided at the time our client submitted its application that there were significant shortfalls in service levels. Objectors were permitted to provide their own evidence in response if they believed this was no longer the case, but no such evidence has been submitted.

4.2.37 Morrisons have completely failed to engage with this process and have provided no information whatsoever.

4.2.38 Well have made general statements that concerns around service levels were addressed but have provided no evidence to support this statement. No copies of correspondence with the Commissioner have been provided and no internal reports relating to current service levels such as waiting times and stock levels, or positive feedback from patients has been provided either.

4.2.39 It is our client’s case that service levels have not improved notably and we provide further evidence in this respect later.

4.2.40 In respect of the current NHS pharmacy services being provided by the existing two pharmacies, we also address this matter later.

Location of Well Pharmacy’s patients

4.2.41 The appellant challenges the assertion that it “likely gains most of its activity from visitors”. It states that “this statement is simply incorrect”.

4.2.42 Clearly only Well have information in respect of where their patients live, so we have no evidence to back up the assumption made by the PSRC. However, for the reasons we discuss in this submission, we maintain that residents of the town are likely to avoid travelling to Fore Street unless they live close enough to walk to the pharmacy.

4.2.43 Not only is Totnes a large town, it is also very hilly so the number of the town's residents who can comfortably walk to this pharmacy will be limited.

4.2.44 The hilly nature of Totnes can be seen in the topographic map below.

4.2.45 This shows that there is a difference in elevation of approximately 150m between the lowest and highest points of the town. Fore Street is well known for being on a significant hill, as can be seen in the photograph below, which also shows the narrow pavements.

4.2.46 The appellant then goes on to speculate where Morrisons patients live without explaining where this information has been obtained from. Again we have no information to suggest Rushport have been engaged by Morrisons.

Journey to existing pharmacies

4.2.47 The appellant comments on the pedestrian routes from Leatside Surgery to the pharmacy at Morrisons.

4.2.48 In respect of the footpath shown (188m), the PSRC correctly noted that this route would not be an attractive prospect in the dark. The footpath is narrow, enclosed, overgrown and the northern part (though a semi-industrial area) has no lighting.

4.2.49 Furthermore, the path is uneven in parts, due to tree root damage and the end near Morrisons is sloped, making access more difficult for patients with reduced mobility or wheelchair users.

4.2.50 As it is next to the river, the footpath is also prone to flooding following extended periods of wet weather.

4.2.51 For many years patients have expressed their concern that the route feels unsafe and despite several appeals over the years to the council by Leatside Surgery, lighting has never been installed.

4.2.52 The images below [see Appendix D] show this footpath.

4.2.53 In terms of the alternative route suggested by the appellant, it is noteworthy that using the route that avoids the pedestrian island adds a further 150m to the journey, which would become 700m in total from the surgery to Morrisons.

4.2.54 We also note that the pavement on the southern side of Coronation Road (before crossing over to reach Morrisons) is very narrow in parts and therefore difficult.

4.2.55 Finally, it is not correct to say that this a ‘reverse journey’ for patients who are visiting the medical centre, because there is no reason these patients would have started their journey at Morrisons.

Access by Bus

4.2.56 We note the comments made by the appellant in respect of bus services. It states that there are “multiple bus services from the area around Leatside Surgery”.

4.2.57 To be clear there is only one bus stop at the surgery site. This is served by routes B1B and B2F. This is a community bus service known as ‘Bob the Bus’. We have enclosed a copy of the timetable for this service [see Appendix G].

4.2.58 Whilst there are two buses per hour (serving two different circular routes), the two services stop at the surgery site 10 minutes apart (five past and fifteen minutes past the hour). Patients who are reliant on this service may therefore have to wait up to 50 minutes to access the town centre if they wish to access a pharmacy, having been to the surgery first.

4.2.59 Whilst it may appear, from the route map provided by the appellant, that several other services pass nearby, in fact they travel along Station Road and Coronation Road. The nearest stop on Station Road is 450m away, and the nearest stop on Coronation Road is beyond Morrisons so is of no benefit to patients.

4.2.60 It is not clear, therefore, that the appellant is right when it says there is good access to a reasonable choice of pharmacies using public transport.

General Points

4.2.61 Whilst it is clearly the case that people will need to travel to the surgery in the first instance, this does not diminish the challenges they may face accessing Morrisons or Well as we have discussed. It also does not diminish the service level issues at these two pharmacies.

4.2.62 As we discuss later, there is significant evidence that patients have concerns regarding the locations of the existing pharmacies. It is the combination of this, the poor service levels and the lack of additional pharmacy services provision over and above dispensing (as we discuss later) that makes our client’s case compelling.

4.2.63 Whilst the population of Totnes town may be in the region of 9,000 residents, it is noteworthy that the combined patient lists of the two medical centres in the town is currently over 19,500 patients. The two surgeries prescribe approximately 28,000 items per month.

4.2.64 It is also noteworthy that data from Leatside Surgery shows they provided 97,521 appointments in 2024. The vast majority of these were face to face (63,223). Of these, 36,554 were for same day access. Assuming an average 5 day working week at the surgery this amounts to 250 patients attending the surgery each day for face-to-face appointment, of which approximately 150 were same-day appointments for more urgent matters.

4.2.65 It is clear, therefore, that the ‘catchment’ of the town is more than double the number of residents who live within the town’s boundaries and is even larger when the tourist population is taken into account.

4.2.66 It is our client’s case that it is this large reliant population which places pressure on the existing pharmacy provision in the town.

Additional Information for the Committee

4.2.67 Having addressed the matters raised in the appeal letter, we wish to provide additional information to assist the Committee in determining this application.

Service levels at Well and Morrisons

4.2.68 One of the key arguments made by the appellant is that the issues with service levels that arose following the closure of the Boots pharmacy were temporary. It makes the case that those issues have subsequently been addressed.

4.2.69 As we discussed earlier, the appellant has not provided any evidence to support this assertion, so our client has engaged with various parties to understand the level of satisfaction, or otherwise, with the current service levels.

4.2.70 We summarise the feedback our client has secured in this respect below, and supply supporting evidence as appendices [see Appendix E] to this appeal response (which use the same numbering as below).

Letter of support from Caroline Voaden MP dated 22nd January 2025.

4.2.71 It is noteworthy that Ms Voaden refers to having received “countless emails from concerned constituents regarding delays and issues with accessing essential pharmacy services in Totnes since the closure of the Boots pharmacy at Leatside”.

4.2.72 It is also noteworthy that she refers to requests from Well and Morrisons that “Pharmacy First consultations are not referred to them due to lack of capacity”. We discuss this matter further later.

Letter of support from Leatside Surgery Patient Group dated 12th January 2025

4.2.73 This letter refers to “numerous contacts and enquiries from patients…… from patients who find it physically difficult to go to one of the two pharmacies in Totnes…… to those who have queued for up to an hour at one of the pharmacies, only to be told that a vital medication is not in stock”.

4.2.74 The letter refers to many issues “over the last 6 months” and also discusses parking issues in the town. Several examples of the failings in current provision are also discussed in the letter, which is self-explanatory.

Emails from patients to Martin Randall, General Manager of Leatside Surgery

4.2.75 As part of the process of engaging with patients, the Patient Group reached out to patients directly to make them aware that our client’s application had been appealed. Patients who wished to comment on the matter were invited to email Martin Randall, General Manager at the surgery, with their feedback.

4.2.76 In the space of two weeks the Leatside Surgery has received 73 emails from patients setting out their experiences and the reasons they support our client’s application. These are very recent, not historical, experiences that clearly demonstrate that the issues that existed immediately after the Boots closure still exist.

4.2.77 We have not provided extracts from these emails, as they are too numerous, but the Committee will see that there is extensive information here relating to accessibility issues and problems with service levels.

4.2.78 There is also mention by some respondents of the limitations of using an online pharmacy service as an alternative to a pharmacy within their community. The point is made that whilst this might be an option for some patients receiving repeat medication it is not suitable for acute medicines or for the provision of advice, and the service is not accessible for elderly residents who may not be comfortable with using online services.

Letters from patients to Martin Randall, General Manager of Leatside Surgery

4.2.79 In addition to the emails submitted, four patients submitted their comments by letter. These four letters are provided [see Appendix E].

Patient engagement with our client.

4.2.80 One of the Pharmaderma Limited directors attended the Leatside Surgery on the afternoon of Monday 13th January and invited patients who were there to discuss their thoughts on proposals to open a pharmacy at the surgery site again.

4.2.81 Seven patients expressed their support to our client in a short period of time and provided examples of their concerns about existing provision. These comments were recorded by our client while patients were present and these patients were happy that the attached transcripts accurately reflected their comments.

Email from Totnes local councillor and pharmacy technician.

4.2.82 This email sets out the personal experiences of a local resident who is both a town councillor and a qualified pharmacy technician. She is well placed, therefore, to objectively assess the pharmaceutical service levels currently being provided in Totnes.

Letter of support from a local locum pharmacist

4.2.83 This is self-explanatory.

Letter from a local resident regarding smoking cessation services.

4.2.84 This letter details the experience of a local resident looking for information regarding smoking cessation services from the existing pharmacies. This supports the comments we make later regarding lack of provision.

Letter of support and additional evidence from Leatside Surgery

4.2.85 As well as the practice expressing support generally, this letter provides further evidence relating to:

4.2.85.1 Long turnaround times for repeat prescriptions

4.2.85.2 Increasing levels of medicines that are out of stock

4.2.85.3 Pharmacy closures, both planned (with Well Pharmacy closing on Saturdays and Morrisons having extended lunch closures) and unplanned due to the flood mentioned previously and a lack of pharmacist cover at Morrisons.

4.2.85.4 Lack of availability of the Pharmacy First service.

Letter of support and additional evidence from Catherine House Surgery

4.2.86 This letter makes it clear that it is not only the Leatside Surgery who recognise the shortfalls in current provision. The GPs at the other Totnes practice would also welcome an additional pharmacy, despite the fact it would be attached to a different surgery.

Reviews

4.2.87 In terms of further independent evidence in respect of pharmacy service levels, we have considered Google reviews for each of the two pharmacies over the last 6 months (to ensure they are current, bearing in mind this period is more than 6 months after Boots closed).

4.2.88 Appendix 11 [see Appendix E] provides all reviews for Morrisons, not just those which are adverse. We note that there are 10 reviews of which 6 gave one star out of five and the other four each gave two, three, four and five stars. The wording of the 5 -star review is provided below:

"I feel for the staff here. It must be overwhelming with such demand. The queues are long and it's stressful for everyone".

4.2.89 It appears that the five stars are provided out of sympathy for the pharmacy team rather than as a reflection of the quality of service provided.

4.2.90 By way of balance, the two reviews provided for Well (appendix 12[see Appendix E]) are a little better, although the most recent one of these was provided 5 months ago. The second of the two reviews highlights the poor and dirty presentation of the pharmacy.

NHS Pharmacy Service provision.

4.2.91 The appellant states "the Applicant is offering no additional NHS services than are currently being provided by the existing pharmacies".

4.2.92 It is our client's position that this is not correct.

4.2.93 The letters and emails discussed earlier provide information from both patients and the Leatside Surgery in respect of Pharmacy First and Smoking Cessation, but in order to properly assess current service provision our client has carried out detailed analysis of the extent to which Well and Morrisons engage in the provision of commissioned Pharmacy Services. We have provided this analysis in full, as appendix 13 [see Appendix F], but summarise the findings below.

4.2.93.1 Looking the level of Pharmacy Services provided by Boots prior to closure, the two remaining Pharmacies were only able to provide 56% of the number of service consultations that Boots offered single handily over the same time period. This demonstrates a clear reduction in service provision.

4.2.93.2 Almost without exception, the delivery of pharmacy services by Well and Morrisons, both before and after the Boots closure was below average or non-existent.

4.2.93.3 In the previous 9 months of data available from the quarter that Boots closed (Q3 2023/24) to Q1 of 2024/25 Well have not delivered a single Ambulatory Blood Pressure Monitoring (ABPM) service (despite this

being an important post requisite to the clinic blood pressure reading of the hypertension case finding service). Well have also not delivered a single Discharge Medicine Service despite this being an essential service as part of the NHS Community Pharmacy Contractual Framework. No contraceptive service consultations have been provided during this period nor a single smoking cessation consultation or lateral flow distribution service.

4.2.93.4 Over the same 9 month period Morrisons Totnes have also not provided a single Ambulatory blood pressure reading. This means both Pharmacies are providing clinic blood pressure readings and identifying patients with high blood pressure and not following up with a more in-depth ambulatory reading and therefore placing more strain on General Practice. Morrisons have also not provided a single Discharge Medicine Service or stop smoking consultation during this period.

4.2.93.5 The lack of ambulatory blood pressure, discharge medicine service and smoking cessation service provision in Totnes when previously offered by Boots Pharmacy at Leatside demonstrates both a need for these services as well as identifying a gap in pharmaceutical services provision that can be filled by the grant of the PharmaDerma application.

4.2.93.6 Information is also provided to show the applicant's excellent track record in respect of service provision at its Devon pharmacy compared to the two existing Totnes pharmacies.

4.2.94 There is an important distinction between a pharmacy being commissioned to provide a pharmacy service and actively engaging in providing that service.

4.2.95 The appellant cannot claim that the lack of provision is due to a lack of demand, as the evidence in respect of Boots provision prior to closure shows that there was a clear demand for these pharmacy services. There is no reason why that demand would have changed following the closure of Boots.

4.2.96 There is also clear evidence that these services are in demand across Devon, so there is no reason why Totnes would be any different.

4.2.97 The explanation for the lack of service delivery is clear. The two pharmacies have struggled to cope with the additional dispensing volume following the closure of Boots so simply do not have time to offer these services.

4.2.98 Evidence from the Leatside Surgery shows that both Well and Morrisons have specifically asked the surgery not send them any GP Pharmacy First referrals because they cannot cope.

4.2.99 The programme co-ordinator for the "Stop for Life" smoking cessation programme has confirmed that neither Well nor Morrisons are signed up to provide the programme, despite their NHS website entries showing that they do. This has been further evidenced by the experience of the local resident who enquired about this service.

4.2.100 NHS pharmaceutical services amount to far more than the provision of dispensing. There is clear evidence that the existing pharmacy contractors in Totnes are significantly under-delivering when it comes to these services. Issues with service levels in respect of dispensing are far more apparent to

patients because they have no choice but to attend a community pharmacy should they need to collect a prescription.

4.2.101 It is for this reason that most of the complaints provided relate to dispensing. However it is clear that patients in the town are being denied access to the full range of pharmaceutical services they should be able to expect to support their health in so many more ways. In some cases, provision is non-existent such as with the Discharge Medicine Service, Smoking cessation and ABPM and in other cases provision is well below the expected levels, suggesting that these contractors offer these services only on a patchy basis.

4.2.102 Granting this application, from a contractor with a proven track-record of above average service delivery will re-instate proper pharmaceutical services provision for patients.

Accessibility

4.2.103 Whilst the matter of accessibility has been discussed extensively already, there are several other points that are relevant to the committee's deliberations.

4.2.104 To be clear in respect of car parking, the proposed premises at the Leatside Surgery benefits from 36 free patient parking spaces, of which 4 are disabled spaces. Patients who wish to use these spaces are required to register their vehicle details within the surgery to avoid these spaces being used by patients who are not attending the medical centre. A terminal will be provided within the pharmacy for patients to register if they have not attended the surgery first.

4.2.105 As we have discussed already, the only free and unrestricted parking available in the town is at the Morrisons store where spaces are quickly taken due to its proximity to the town centre. There are many times of the day when it's just simply not possible to park in this car park.

4.2.106 Whilst there are several other car parks in the town, we ask the Committee to note the following:

4.2.106.1 Parking on Fore Street is highly limited, as we have discussed already, and non-existent at present.

4.2.106.2 Some of the larger car parks are located off the High Street, at the top end of the town up a significant gradient. Any patient who has mobility difficulties would not be able to use these car parks to access Well.

4.2.107 Whilst the Victoria Street car park is at the bottom of the town, as we have discussed previously this car park is regularly full, particularly in the busy tourist season. Many of the people who have made representations confirm that parking in the town is challenging.

4.2.108 In terms of the physical accessibility of the Well Pharmacy, several of the patient emails refer to the steps and the 'difficult door' for the pharmacy. These are shown in the image below [see Appendix D]

4.2.109 It is essentially impossible for any patient in a wheelchair, or with significant mobility problems to negotiate these steps. We understand that Well have historically been refused permission to install a ramp as it would encroach too much on the pavement.

4.2.110 Finally, in respect of physical accessibility, whilst no pharmacy contractors are obliged to offer patient deliveries we are told that Well stopped offering patient deliveries very shortly after Boots closed. Furthermore, Morrisons does not offer a free prescription delivery service either.

Regulatory tests

4.2.111 We conclude by referring back to the regulatory tests the Committee will be required to consider in respect of the evidence we have provided in this appeal response and previously.

Regulation 31

4.2.112 It is clear that Regulation 31 is not engaged and no party has suggested that it would be, so we do not believe this is contentious.

Regulation 18(1) – Improvements or better access not included in the Pharmaceutical Needs Assessment

4.2.113 Again, no party has suggested that the benefits our client proposes to deliver were included in the PNA or any subsequent supplementary statement. The PSRC found there was no need to refuse the application in accordance with Regulation 18(1), and as this matter appears to be straightforward we have no additional comments to make on this matter.

Regulation 18(2)(a) – Significant detriment

4.2.114 The PSRC considered this matter and found the following:

> *"The ICB has no particular plans regarding pharmaceutical services in the area and no issues were raised in the consultation responses, so there can no detriment to such plans."*

4.2.115 Well Pharmacy response states they coped with the sudden increase at the time of exit, but do not address the patient comments or provide any evidence about the impact this application (if granted) would have on the viability of their service. Morrisons did not comment. There was no other suggestion that there would be significant detriment to the arrangements already in place.

4.2.116 The SW Committee was satisfied that granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services.

4.2.117 The appellant makes no claim that the application should be refused in accordance with Regulation 18(2)(a), so again we assume this matter is uncontentious and we have no further comments to make.

Regulation 18(2)(b)(i) – Choice

4.2.118 In its decision report, the conclusion reached by the PSRC on the matter of choice was as follows:

> *"The SW Committee concluded that because of the accessibility and proximity of the existing pharmacies by car or by bus that granting the application would confer a significant benefit by way of access to, or choice of, pharmaceutical services. The appellant challenged this conclusion and we have addressed the comments made by the appellant earlier."*

4.2.119 Our client has provided extensive additional evidence with this appeal response which we believe reinforces the assertion that patients do not have reasonable choice in respect of access to pharmaceutical services. We ask the Committee to note the following:

4.2.120 The opening hours proposed by our client ensure there will be pharmaceutical services provision available in the town between 8am (when the surgery opens) and 9am. At present patients have to wait until 9am (or potentially later if the pharmacy does not open on time) to even enter the pharmacy. Bearing in mind the long waiting times described by many respondents it could be 9.30am or later before these patients actually receive their medication. For the working population this is not satisfactory. Patients have no choice at present should they require pharmaceutical services before nine o'clock in the morning.

4.2.121 Unlike Well, our client's pharmacy will open on Saturday mornings providing additional choice for patients who are currently obliged to receive their pharmaceutical services from Morrisons. Bearing in mind the extensive evidence provided in respect of poor service levels, late opening and pharmacist unavailability, granting our client's application will ensure patients have reasonable choice in respect of provision on Saturday mornings.

4.2.122 It is noteworthy that significant proportion of the prescription items that were being dispensed by Boots did not transfer to either Well or Morrisons. It is clear that there were some patients who felt neither of these pharmacies provided them with reasonable choice and their only option was to use online providers such as Pharmacy2U.

4.2.123 Whilst these patients may have found an online service satisfactory when it comes to receiving repeat medication, they have found that these online providers do not meet their needs when it comes to acute medication (or indeed other pharmacy services). Granting this application will ensure there is once again reasonable choice so that patients are not required to rely on a remote service which does not properly meet all of their needs.

4.2.124 There is very extensive evidence in respect of shortfalls in service levels at both pharmacies but most notably at Morrisons, which is the busier of the two pharmacies. It appears that the pharmacy team at Well are doing their best in difficult circumstances but they are simply unable to meet levels of demand, so it is inevitable that some patients are dissatisfied with the service received.

4.2.125 Morrisons have not responded at any stage of the application process so we have no information in respect of what measures, if any, they have tried to put in place to improve service levels. Their lack of engagement appears to provide further evidence that Morrisons simply don't care about Totnes. Either that or they do not object to our client's application because they realise granting the application is the only way the capacity issues they face will be addressed.

4.2.126 Granting our client's application will ensure that, when patients seek to exercise choice, they do not have to decide between two pharmacies which are providing an inadequate service.

4.2.127 We have provided evidence that, when it comes to receiving pharmacy services, for some services patients have no choice whatsoever. There is no provision of the Discharge Medicines Service, Smoking Cessation or ABPM in the town. For patients who wish to access other pharmacy services current levels of provision are patchy at best. Patients cannot be said to have reasonable choice in respect of the full range of pharmaceutical services when some of these services are not being provided at all.

4.2.128 In respect of physical access we have provided evidence in respect of parking difficulties, a road closure, difficult journeys for pedestrians, hills and limited bus services. It is clear that, contrary to the comments made by the appellant, there are physical access difficulties for both the pharmacies.

4.2.129 Our client's application offers pharmaceutical service provision at a location away from the busy town centre with dedicated free parking next to the largest medical centre in the town which is attended by 250 patients every day. This would ensure reasonable choice in respect of the location that pharmaceutical services are provided from.

4.2.130 Taking all of the above into account, it is our client's position that there is not reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB.

Regulation 18(2)(b)(ii) – Patients with protected characteristics

4.2.131 In its report, the PSRC stated:

"Little information has been provided by any party on this matter.

The SW Committee was of the view that granting the application would not confer significant benefits on people sharing a protected characteristic".

4.2.132 We refer the Committee to the numerous submissions made by patients who either have chronic illnesses or mobility difficulties themselves or who have commented on behalf of family members who do. The letters and emails make it clear that there is a significant number of people who share protected characteristics, specifically in relation to age and disability, and who have difficulty accessing the pharmaceutical services they require.

4.2.133 This provides clear evidence in respect of the 'desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access'.

Regulation 18(2)(b)(iii) – Innovation

4.2.134 We are aware it is difficult to provide evidence of innovation (in such a way that this regulatory test is met) given the narrow definition of pharmaceutical services and the inability to offer these innovatively when commissioning and specification of services is inflexible.

4.2.135 That being the case out client is not advancing an argument of innovation.

Conclusion

4.2.136 In our client's view it can be clearly seen that the residents of this area would benefit greatly from having a community pharmacy reinstated at Leatside Surgery. This application clearly demonstrates benefits which were unforeseen and not identified when the PNA was published.

4.2.137 The resident population do not have a reasonable choice of provider or enjoy easy access to any existing pharmacy contractors now that Boots has closed, especially for those who are on foot, are reliant on public transport, elderly, infirm or disabled. There is a gap in pharmaceutical services in this area.

4.2.138 Patients do not have reasonable choice in respect of access to pharmacies in the wider area as the nearest alternative pharmacies are 6 miles away.

4.2.139 Notwithstanding the fact that there is a geographical gap in the provision of pharmaceutical services resulting from this closure, it is also relevant that when one or more pharmacies close, the shortfall in service provision is felt far more acutely by patients than in areas where there has never been any provision.

4.2.140 Our client firmly believes if this application is approved it will secure improvements in choice and better access to pharmaceutical services and thus provide significant benefits for the resident population.

4.2.141 We therefore urge Primary Care Appeals to reach the same conclusion as the ICB and grant this application accordingly."

5 Comments to the Commissioner

On reviewing the paperwork provided by PCSE, it was noted that the comments made by the Applicant in response to the representations on the application, had not been circulated or seen by parties.

In the interests of transparency and fairness, NHS Resolution sought to rely on the discretion afforded in paragraph 7 of Schedule 3 of the Regulations to vary the normal procedures and to circulate these comments to parties for them to make observations on them if they so wished.

5.1 PSC ON BEHALF OF THE APPLICANT

5.1.1 "Thank you for your letter of 10th June enclosing third party comments in respect of the above application. We continue to act for the applicant, Pharmaderma Limited and wish to respond as follows:

Letter from Totnes Town Council dated 20th May

5.1.2 We note that the town council is supportive of our client's application so we have no further comments to make at this time.

Devon LPC – letter dated 7th June 2025 [sic]

5.1.3 The LPC state that the closure of a pharmacy within an area does not automatically create a gap in pharmaceutical service provision. Whilst we do not disagree with this principle, in this case there is significant evidence that the remaining pharmacy contractors have been under severe pressure as a result of the closure. The effect of this is that patients no longer have reasonable choice in respect of access to pharmaceutical services.

5.1.4 Whilst it is correct that the Health and Wellbeing Board have not specifically identified a gap, this does not mean no gap exists. It is for this reason our client's application has been submitted to provide Unforeseen Benefits because these benefits were not included in the PNA or in a subsequent supplementary statement.

5.1.5 In respect of complaints, it would be highly unusual for the LPC to receive complaints directly from the public regarding pharmaceutical services provision as it is unlikely that members of the public would have any awareness of the LPC's existence.

5.1.6 Our client has no comments to make on the controlled locality matter at this time.

Well Pharmacy – letter dated 30th May

5.1.7 We have already addressed the matter of whether the closure of one pharmacy automatically means that a gap has been created.

5.1.8 Whilst the Well pharmacy branch may not seem to be very far away from the proposed location, it is located on an incredibly busy high street which is frequently overwhelmed with tourists and has very limited parking. It is very rare that patients are able to park on Fore Street anywhere near the pharmacy and those that do are required to pay.

5.1.9 Whilst we note that Well have increased their market share following the closure of Boots, it is still the case that the majority of patients registered with Leatside surgery do not use Well as a result of the access difficulties highlighted.

5.1.10 In terms of opening hours, Well are wrong to say that would be no improvement in opening hours should our client's application be granted. Our client proposes to open the pharmacy at 8am (core hours) when the surgery opens. This is an hour before either of the other two pharmacies in the town opens.

5.1.11 We have no additional comments to make at this time and look forward to hearing the outcome in due course."

6 Observations

6.1 RUSHPORT ADVISORY ON BEHALF OF THE APPELLANT

6.1.1 "I act for Bestway National Chemists Ltd trading as Well Pharmacy and have been instructed by my client to submit these comments in reply to the submissions from the Applicant and DMB in relation to the above appeal.

PSC for the Applicant

6.1.2 The first 3 pages of the PSC letter recite the Commissioner's decision.

6.1.3 Page 4 of the PSC letter confirms that the Leatside Surgery, having now agreed commercial terms with the Applicant for financial reward, has now decided to support this application.

6.1.4 In respect of the appeal, PSC disagrees that the Commissioner proceeded on the wrong basis. However, even a basic reading of the Commissioner's reply to my client's appeal shows that they did just that and continue to do so. We address the comments made by the Commissioner later in this response.

6.1.5 Dealing with other matters raised by PSC and using the same headings that are used in the PSC letter we comment as follows.

Location of Well Pharmacy

6.1.6 PSC accepts that Well Pharmacy is located in the town centre and that Morrisons is located just outside the town centre.

6.1.7 Totnes can be busy in summer months and patients therefore have a choice of both a town centre pharmacy operated by my client, or the Morrisons pharmacy located a short distance from the town centre and Leatside Surgery. PSC does not dispute this.

6.1.8 Parking along Fore Street can be more difficult in summer months, however PSC has simply ignored and continues to ignore the location of other car parks close to Fore Street.

6.1.9 In our letter of appeal we highlighted the existence of additional car parking and this is copied below for reference. PSC does not make any comment about this and it should be treated as undisputed.

6.1.10 Whilst there is parking available directly outside Well Pharmacy, the main car park at Victoria Street is a 300 metre / 4 minute walk from Well Pharmacy. Victoria Street car park is a short stay car park (3 hours maximum) costing £1.20 for 1 hour (£2.80 for 3 hours) with multiple disabled bays.

6.1.11 It is not clear why the Commissioner has ignored the existence of not just this car park but other car parks and parking areas within a short distance of Well Pharmacy.

6.1.12 PSC then asks the Committee to consider a temporary road closure and a closure of my client's pharmacy due to flooding as evidence of need for an additional pharmacy.

6.1.13 Fore Street is subject to a temporary closure. The council states as follows;

"This temporary restriction is considered necessary to enable: road closure & parking suspension on fore street from junction of station road to junction of coronation road, required to enable completion of phase three/final phase of gas mains replacement & upgrade works in town centre. One way restriction on station road to be removed to allow two way traffic."

6.1.14 The temporary closure will likely have finished prior to a decision being made in this appeal and it is clearly not relevant to the application.

6.1.15 Likewise, a closure due to flooding does not merit the approval of this application and no weight should be placed on such rare events. As the Committee will note later in this reply, there has only been one closure due to flooding (contrary to the Applicant's claims).

6.1.16 My client's pharmacy is perfectly located for those who access the town centre for shopping or other services. PSC states that "many patients have no need or desire to use Fore Street when they require pharmaceutical services" and those patients can access the nearby Morrisons pharmacy or other pharmacies in the wider area.

6.1.17 PSC then appears to criticise my client for not opening on Saturday, however their own client proposes no core opening hours for Saturday and clearly does not believe there is any requirement to secure opening for any hours on Saturday.

Location of Morrisons Pharmacy

6.1.18 PSC confirms that Morrisons Pharmacy offers 2 hours free parking for everyone and not just those shopping at Morrisons and yet claims that this supports their application (which it clearly does not). Morrisons has ample parking and the store clearly believes that there is no requirement to restrict parking to its own customers. PSC claims that "many motorists will leave without being able to park" but provides no evidence to support this claim- which is denied.

Service levels

6.1.19 PSC states;

"The suggestion made by the appellant is that the issues which had arisen in terms of service levels were limited to the first few months following the closure of the Boots pharmacy. It claims that "both Well and Morrisons were in regular contact with the Commissioner and addressed all concerns that were raised".

It is not clear whether Rushport have been instructed by Morrisons to represent them and, if they have, what information Morrisons have supplied in respect of 'addressing concerns' and communication with the Commissioner."

6.1.20 The reason that we are aware of the Commissioner's engagement with both Well Pharmacy and Morrisons Pharmacy is that both Well and Morrisons were jointly discussing service levels with the Commissioner and were aware of each others involvement. My client is clear that there are no ongoing issues with service levels in Totnes. PSC's comments on the "burden of proof" are misguided.

6.1.21 It is worth remembering that my client's pharmacy in Totnes had a lot of spare capacity prior to the closure of Boots as it was only dispensing circa 3,500 items per month. Since the closure of Boots over a year ago my client's prescription numbers have stabilised at approximately 8,500 items per month, which is only slightly higher than an average pharmacy and also shows that patients in Totnes are using my clients pharmacy.

6.1.22 My client provides a reply to the claims made by PSC later in this submission and this demonstrates that the claims made are simply untrue.

Location of Well Pharmacy's patients

6.1.23 PSC is correct that only my client knows where their patients come from, however, they choose to ignore the fact that publicly available data shows that the vast majority of my client's prescriptions come from doctors who practice in Totnes. My client also provides services to visitors, especially during summer months, but this tends to be for over the counter products that visitors would normally need, such as suncream, anti-histamines, pain killers etc rather than pharmaceutical services. Data from NHSBSA shows no spike in service provision during the summer as most tourists bring medication with them.

6.1.24 PSC then provides a topographic heat map and states "The hilly nature of Totnes can be seen in the topographic map below." And "This shows that there is a difference in elevation of approximately 150m between the lowest and highest points of the town".

6.1.25 As the Committee will note, the map does not show a significant change in elevation across the area covered by the town centre or the best estimate area provided by the Applicant as the entirety of this area is shaded blue. In an attempt to support their case PSC has taken elevation reading from an area outside of the town where there is no housing.

Journey to existing pharmacies

6.1.26 We note that PSC now accepts that there are multiple routes available for those who travel from the surgery on foot and that there is no need to use the shortest route when it is dark as other routes exist.

6.1.27 We note that the Applicant, despite having the support of the surgery, provides no details of how many patients travel to the surgery on foot. The Committee will be aware from many other cases that the vast majority of patients who access medical centre premises do so by car and 76.3% of households in the Totnes ward have access to one of more vehicles.

6.1.28 PSC has found a single Google streetview image of one side of a road that shows it to be narrower than average and appears to claim that this supports the view that access on foot is poor. We trust the Committee will see this for what it is and note that there are pavements on both sides of the road.

Access by Bus

6.1.29 This response to my client's appeal is the first time that PSC has mentioned access by bus and we note that they now accept that there is a bus stop at the surgery site with 2 buses per hour that service Totnes. PSC now also accepts that there are other bus routes a 450 metre distance from the surgery site (at Station Road and Corporation Road).

6.1.30 The bus stop on Coronation Road is located 80 metres past Morrisons and is served by the 88, 91, 92, 149, 164, 165, 167 ,SD3 and gold bus routes and it is unclear why PSC thing [sic] that the fact it is 60 metres "beyond" Morrisons could mean it would not be of no benefit to patients when such patients can clearly use the bus stop to travel to and from Morrisons pharmacy and also to access Leatside Surgery.

6.1.31 In fact, public transport provides excellent access not only to pharmacies in Totnes but also outside of Totnes.

Letters and Emails

6.1.32 The Applicant provides a number of letters and emails of support. Having read these thoroughly it is clear that they focus on the perceived "loss" of a pharmacy at the medical centre and a desire to replace that service, but are of little assistance when the correct regulatory test is considered.

6.1.33 The Leatside Surgery stands to make a significant amount of money from finding a new tenant for the pharmacy space that now stands empty at their premises. A new tenant would create a capital value uplift for the partners of many hundreds of thousands of pounds and it is not surprising that the practice would support such a development.

6.1.34 Looking at other emails and letters, it is accepted that some patients experienced a small increase in their journey to access pharmaceutical services after Boots closed. Remaining pharmacies in Totnes had to adjust to the new demand from patients but are now perfectly able to provide proper and sufficient services to patients.

6.1.35 Many of the issues raised by patients would not even be addressed by the opening of a pharmacy at the surgery premises. For example, the first email (page 30 of the PSC bundle [page 7 of Appendix E]) refers to out of stock medication on a Saturday. The Applicant offers no Saturday core hours and all pharmacies will have issues accessing medication at weekends when there are no deliveries from wholesalers.

6.1.36 The next letter (page 31 [page 8 of Appendix E]) states that the Boots closure "was inconvenient for a number of reasons". This is a common theme with

patients quite understandably looking for anything that provides greater convenience.

6.1.37 Page 32 [page 9 of Appendix E] – again a comment on availability of medication which affects all pharmacies.

6.1.38 Page 33 [page 10 of Appendix E] mentions queues and delays but without any clarity on what is meant by this and focusses (again) on availability of medication.

6.1.39 As the Committee will note, the Leatside Surgery has requested that patients raise concerns about pharmacy services. The letter from the PPG states that

"As you know, Leatside generate approx. 97,000 appointments annually, of which over 60,000 are face to face with a GP and 35,000 are "on the day"."

6.1.40 This suggests over 1,000 appointments per week and in the two weeks that the surgery asked patients for their views a total of 73 out of over 2,000 provided comments, with many of these referring to issues that a new pharmacy would not solve.

6.1.41 The Committee can of course make its own mind up on the weight to be given to this support from the practice but will see the same issues often raised that the Applicant would not solve.

Specific Responses to Points Raised

6.1.42 Well Pharmacy has reviewed the claims made by PSC and their clients and strongly refute them. My client's specific responses to the points raised by PSC are copied below for the Committee's attention and address the points numbered in the PSC response to our appeal.

6.1.43 Flooding – I have been through the data with our Retail Support Team who log all of this, and we can only find one record of the branch being closed due to flooding. This was for four hours between 11:30 and 15:30 on 23rd Jan 2025.

6.1.44 Point:

6.1.44.1 No instruction has been issued from us to not send Pharmacy First referrals. The staff in the branch have confirmed that they have not either. We have consistently completed all referrals made to the branch, completing 113 clinical pathway consultations so far this year (from July 2024), 16 referred minor illness consultations and 22 urgent repeat medication consultations. I would be very keen to see actual evidence of this claim as opposed to hearsay.

6.1.44.2 Other than the roadworks that have occurred (that are referenced) there have been no consistent parking issues in the high street. The branch is not on the steep part of the high st [sic]. We do have a step, but we also have a bell to allow patients to summon a staff member should they be unable to use the step.

6.1.44.3 These letters, when solicited by those with a vested interest, are often not representative of the sentiment of the community. Furthermore, absolute convenience for an individual does not demonstrate the need for a pharmacy.

6.1.44.4. As above.

6.1.44.5 There are, and have not been, long turnaround times for repeat prescriptions. Medicines shortages is a nationwide issue that would not be solved by an additional pharmacy. Well uses four separate suppliers to ensure that where a medication is available it can be sourced. The pharmacy first point is addressed above. We reiterate, that we would welcome, in fact, desperately need, more pharmacy first engagement from the Surgeries in the town.

6.1.44.6 Nothing further to add. An additional pharmacy in Totnes would place intolerable financial strain on all the contractors given the small population. Absolute convenience should not be the measure here.

6.1.44.7 Reviews – The long queues in Morrisons are a result of the widely recognised issues they had at the point that Boots closed. They have since recruited and are in robust shape. These queues are no longer an issue that is recognised. A single review for Well does not demonstrate absolute fact.

6.1.44.8 Services – Well in Totnes has completed 13 ABPM checks since July this year, against 181 clinic checks. This conversion is ahead of the 5% national average. 32% of eligible patients have been provided with an ABPM with the rest rejecting the service.

6.1.44.9 DMS – Well has completed no DMS as a result of receiving just three referrals year to date and none of them being proceedable. This service is extremely limited in provision across the ICB as Pharmaderma will be well aware.

6.1.44.10 Contraceptive – Well have provided three contraceptive provisions in the last six months. We are able to and do provide this service and would be glad to work with the surgery to support this further.

6.1.44.11 There is no suggestion in any of the letters that suggests that any of these services are being declined. Other than a suggestion that the pharmacist in Well (who is a personal friend of the Pharmaderma owners) suggesting that delivery would be possible from a pharmacy that doesn't yet exist, there is nothing to suggest that we are overwhelmed, unable to provide the services that we are commissioned for, or failing to uphold our contractual obligations. Notably, we do provide a full delivery service for all eligible patients in line with the Disability Discrimination Act. Furthermore, Leatside surgery have myriad ways of contacting me, have met me personally and have good links with the PCN. No contact has been made at all to flag that there are concerns about service provision. That the surgery has a significant financial interest in this contract being awarded should place a very heavy level of scepticism on the evidence they have provided.

6.1.44.12 Parking – there is significant short stay on street parking, and a (admittedly not free except for disabled patients) carpark at Victoria Street Car Park, 0.2 miles away and at the bottom of the hill, with a flat path to the pharmacy. The suggestion of having to walk up the hill is entirely misleading. I have visited Victoria St on every occasion I have visited the branch, likely some 10+ times in the last year, and have never found myself unable to park there. I challenge the idea that it is 'regularly full'.

6.1.45 Regulation 18(2)(a) – Significant detriment – this needs to be challenged. This was not my assertion, and I believe that the approval of this application would result in a significant detriment to us as a business.

DMB Representations

6.1.46 The DMB representations demonstrate that they applied the incorrect legal test when considering this application initially.

6.1.47 For example, whilst “choice in the locality has reduced” that is not the correct legal test and there remains a reasonable choice of providers and locations within the HWB.

6.1.48 The DMB notes the percentage of prescriptions dispensed within Totnes and states;

“The SW Committee would respectfully suggest this may be a sign the remaining pharmacies in Totnes are not considered, by a noticeable proportion of patients that were used to making use of Boots pharmacy, as a reasonable alternative.”

6.1.49 Respectfully, this again fails to address the legal test, nor does it provide evidence upon which a decision maker could rely when considering if the Applicant has met the burden of proof.

6.1.50 In our comments above we have already addressed the points made by the BMS about Totnes being a tourist area and access to parking. The DMB provides no evidence of any access issues being faced by patients.

The Reality

6.1.51 Whilst there is parking available directly outside Well Pharmacy, the main car park at Victoria Street is a 300 metre / 4 minute walk from Well Pharmacy. Victoria Street car park is a short stay car park (3 hours maximum) costing £1.20 for 1 hour (£2.80 for 3 hours) with multiple disabled bays.

6.1.52 Fore Street is very well used by residents and visitors alike. What this means is that Well Pharmacy is perfectly located to be available to those who choose to access a pharmacy whilst also accessing other services.

6.1.53 The journey from Leatside Surgery to Well Pharmacy by car takes 2 minutes.

6.1.54 Morrisons offers easy, on-site parking for those who choose not to access the town centre. The journey by car from Leatside Surgery to Morrisons by car takes 3 minutes.

6.1.55 The above shows that there is easy access by car to a reasonable choice of pharmacies within a short distance of the application site.

6.1.56 The shortest route from Leatside Surgery to Morrisons Pharmacy is shown below and involves using the cycle and pedestrian path for a total of 188 metres.

6.1.57 Alternatively, should a patient have walked to the medical centre and wishes to walk to a pharmacy without using this path then the walk is 7 minutes and 0.3 mile to Morrisons as shown below.

6.1.58 However, should a patient wish to use a light controlled crossing then they can do so by walking 72 metres further along the road and using the crossing shown below.

6.1.59 It is unclear what part of the journey on foot that the Commissioner believes is difficult and those who choose to access the medical centre on foot will have made the same journeys in reverse to get there in the first place.

6.1.60 The above shows that there is easy access on foot to a reasonable choice of pharmacies within Totnes.

Access by Bus

6.1.61 There are multiple bus services from the area around Leatside Surgery to both Morrisons and the town centre shops where Well Pharmacy is located. These routes include B1B, B2F, Gold Service, 88 and 167 with overlapping service times providing regular and frequent access to both Well and Morrisons.

6.1.62 The above shows that there is good access to a reasonable choice of pharmacies within Totnes using public transport.

General Points

6.1.63 Leatside Surgery is situated in a mainly commercial part of Totnes on the edge of an industrial estate. Apart from approximately 40 homes in the small residential area opposite the surgery, almost all of the rest of Totnes lives closer to either Well or Morrisons that they do to the surgery.

6.1.64 Totnes Ward, which includes all of Totnes as well as Follaton to the west and the Bridgetown area to the east, had a population of 9,030 in 2022 and this is a relatively small population for 2 pharmacies to serve.

6.1.65 Neither Well nor Morrisons are high volume pharmacies. Neither is unable to cope with their current demand. Since Boots closed, my client's pharmacy has increased its level of dispensing to just over average for a pharmacy in England. If a new pharmacy were to open at Leatside Surgery this would leave my client's pharmacy at serious risk of closure and remove the only pharmacy from the centre of Totnes. Given that my client dispensed approximately 3,500 items per month prior to Boots closure, this is a real and significant risk. Far from securing improvements or better access to pharmaceutical services, granting this application would create a real risk of leaving Totnes without any pharmacy in the town centre."

7 Consideration

7.1 The Pharmacy Appeals Committee ("the Committee"), appointed by NHS Resolution, had before it the papers considered by the Commissioner, together with a plan of the area showing existing pharmacies and doctors' surgeries and the location of the proposed pharmacy.

7.2 It also had before it the responses to NHS Resolution's own statutory consultations.

7.3 On the basis of this information, the Committee considered it was not necessary to hold an Oral Hearing.

7.4 The Committee had regard to the National Health Service (Pharmaceutical and Local Pharmaceutical Services) Regulations 2013 ("the Regulations").

Regulation 31

7.5 The Committee first considered Regulation 31 of the Regulations which states:

(1) A routine or excepted application, other than a consolidation application, must be refused where paragraph (2) applies.

(2) This paragraph applies where -

(a) a person on the pharmaceutical list (which may or may not be the applicant) is providing or has undertaken to provide pharmaceutical services ("the existing services") from -

(i) the premises to which the application relates, or

(ii) adjacent premises; and

(b) NHS England is satisfied that it is reasonable to treat the services that the applicant proposes to provide as part of the same service as the existing services (and so the premises to which the application relates and the existing listed chemist premises should be treated as the same site).

7.6 The Committee noted that the Applicant, in their application form, had stated *"there is no pharmacy in close proximity to the best estimate area"* and in their subsequent representations had noted that this had not been disputed on appeal. The Committee noted the conclusion of the Commissioner that "*there are no other contractors currently providing pharmaceutical services within the best estimate address*" and that it was therefore satisfied that it was not required to refuse the application by virtue of Regulation 31. The Committee noted that this had not been disputed either on appeal or in subsequent representations. On the basis of the information before it, the Committee was not required to refuse the application under the provisions of Regulation 31.

7.7 The Committee noted that, if the application were granted, the successful applicant would - in due course - have to notify the Commissioner of the precise location of its premises (in accordance with paragraph 31 of Schedule 2). Such a notification would be invalid (and the applicant would not be able to commence provision of services) if the location then provided would (had it been known now) have led to the application being refused under Regulation 31.

Regulation 18

7.8 The Committee noted that this was an application for "unforeseen benefits" and fell to be considered under the provisions of Regulation 18 which states:

"(1) If—

(a) NHS England receives a routine application and is required to determine whether it is satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB; and

(b) the improvements or better access that would be secured were or was not included in the relevant pharmaceutical needs assessment in accordance with paragraph 4 of Schedule 1,

in determining whether it is satisfied as mentioned in section 129(2A) of the 2006 Act (regulations as to pharmaceutical services), NHS England must have regard to the matters set out in paragraph (2).

(2) Those matters are—

(a) whether it is satisfied that granting the application would cause significant detriment to—

(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB, or

(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area;

(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published;

(c) whether it is satisfied that it would be desirable to consider, at the same time as the applicant's application, applications from other persons offering to secure the improvements or better access that the applicant is offering to secure;

(d) whether it is satisfied that another application offering to secure the improvements or better access has been submitted to it, and it would be desirable to consider, at the same time as the applicant's application, that other application;

(e) whether it is satisfied that an appeal relating to another application offering to secure the improvements or better access is pending, and it would be desirable to await the outcome of that appeal before considering the applicant's application;

(f) whether the application needs to be deferred or refused by virtue of any provision of Part 5 to 7.

(g) whether it is satisfied that the application presupposes that a gap in pharmaceutical services provision has been or is to be created—

(i) by the removal of chemist premises from a pharmaceutical list as a consequence of the grant of a consolidation application, and

(ii) since the last revision of the relevant HWB's pharmaceutical needs assessment other than by way of a supplementary statement.

(3) NHS England need only consider whether it is satisfied in accordance with paragraphs (2)(c) to (e) if it has reached at least a preliminary view (although this may change) that it is satisfied in accordance with paragraph (2)(b)."

7.9 The Committee considered that Regulation 18(1)(a) was satisfied in that it was required to determine whether it was satisfied that granting the application, or granting it in respect of some only of the services specified in it, would secure improvements, or better access, to pharmaceutical services, or pharmaceutical services of a specified type, in the area of the relevant HWB.

7.10 The Committee went on to consider whether Regulation 18(1)(b) was satisfied, i.e. whether the improvements or better access that would be secured if the application was granted were or was included in the Pharmaceutical Needs Assessment ("the PNA") in accordance with paragraph 4 of Schedule 1 of the Regulations.

7.11 Paragraph 4 of Schedule 1 requires the PNA to include: "a *statement of the pharmaceutical services that the HWB had identified (if it has) as services that are not provided in the area of the HWB but which the HWB is satisfied (a)* ***would*** *if they were provided….secure improvements or better access, to pharmaceutical services… (b)* ***would*** *if in specified future circumstances they were provided…secure future improvements or better access to pharmaceutical services…"* (emphasis added).

7.12 The Committee considered the PNA which was prepared and developed with the Devon wide PNA Steering Group on behalf of Devon's Health and Wellbeing Board to ensure that production of the PNA's for Devon, Plymouth and Torbay followed the same process and format but with locally relevant information. The Committee was conscious that the document provides an analysis of the situation as it was assessed at the date of publication. The Committee bears in mind that, under Regulation 6(2), the body responsible for the PNA must make a revised assessment as soon as reasonably practicable (after identifying changes that have occurred that are relevant to the granting of applications) unless to do so appears to be a disproportionate response to those changes. Where it appears disproportionate, the responsible body may, but is not obliged to, issue a Supplementary Statement under Regulation 6(3). Such a statement then forms part of the PNA. The Committee noted that the PNA was dated 2022 – 2025 and the final draft was published on 23 September 2022. The Committee noted that eight supplementary statements had been issued since October 2023.

7.13 The Committee noted that the supplementary statements (issued in November 2023, December 2023, January 2024, March 2024 and April 2024) covered any changes to the pharmaceutical and that the relevant supplementary statement for the area of the proposed premises in Totnes was "Supplementary Statement to Devon HWB Jan 2024 - Closure of Boots (South Hams, Leatside Health Centre, Totnes – 13.01.24)". The Committee noted that the supplementary statement listed the closing of the Boots

pharmacy at the medical practice and the pharmaceutical services that were provided. The supplementary statement did not state that a gap in pharmaceutical provision had been created by the closure of this pharmacy.

7.14 The Committee noted the conclusions in the Executive Summary that:

"*In conclusion, Devon's growing, and ageing population means that the overall demand for health and social care services is likely to increase, particularly in terms of managing long-term conditions. However, pharmacies in Devon are well-placed to deliver healthcare services to their local communities and it is anticipated that the role they play will continue to evolve over the coming years, particularly with changes to future pharmacy and primary care provision. Whilst the core activity of community pharmacies is commissioned by NHS England, they continue to provide a key role for Devon County Council and the Devon CCG, particularly in relation to improving the public's health and wellbeing and addressing health inequalities."*

7.15 The PNA was split into different localities based on the local authority boundaries. The Committee noted that the proposed premises were located in the South Hams locality which was considered at section 9.5 of the PNA.

7.16 The Committee noted the "Summary headlines" which stated:

"*Good range of opening time coverage across weekdays and weekends*

- *100% of households are within a 15 minute drive to the nearest pharmacy on a weekday*
- *99.9% of households are within a 15 minute drive to the nearest pharmacy on a Saturday*
- *99.8% of households are within a 25 minute drive to the nearest pharmacy on a Sunday"*

7.17 The PNA went on to state that there are 15 pharmacies in South Hams and that there are 2 pharmacies which are open 7 days a week, 10 pharmacies are open on Monday to Saturday only, 3 are open Monday to Friday only; No pharmacies are open before 8am from Monday to Friday, 1 pharmacy is open until after 6:30pm from Monday to Friday.

7.18 The "gap analysis" for current and future provision concluded that "*we do not perceive there to be a gap in current pharmaceutical services provision in the South Hams"* and further:

"It is not anticipated that the increase in housing will significantly impact on the provision of or access to the existing pharmaceutical services and it is concluded that there is no requirement for further provision within the time frame of this PNA. … Any identified change in the situation may be addressed by NHS England commissioning or directing existing pharmacies to open for additional hours without the need for a new community pharmacy. …"

7.19 The Committee noted that the Applicant seeks to provide unforeseen benefits to those resident in Totnes as well as the patients of Leatside Medical Centre. The Committee noted that the improvements or better access that the Applicant was claiming would be secured by its application were not included in the relevant PNA in accordance with paragraph 4 of Schedule 1.

7.20 In order to be satisfied in accordance with Regulation 18(1), regard is to be had to those matters set out at 18(2). The Committee's consideration of the issues is set out below.

Regulation 18(2)(a)(i)

7.21 The Committee had regard to

> *"(a) whether it is satisfied that granting the application would cause significant detriment to—*
>
> > *(i) proper planning in respect of the provision of pharmaceutical services in the area of the relevant HWB"*

7.22 The Committee noted that the Commissioner had "*no particular plans regarding pharmaceutical services in the area and no issues were raised in the consultation responses, so there can [be] no detriment to such plans"* and concluded that it "*was satisfied that granting the application would not cause significant detriment to the proper planning … in place for provision of pharmaceutical services."* The Committee noted that this had not been disputed by any party either on appeal or in subsequent representations.

7.23 On the basis of the information available, the Committee was not satisfied that, if the application were to be granted and the pharmacy to open, the ability of the Commissioner thereafter to plan for the provision of services would be affected in a significant way.

7.24 The Committee was therefore not satisfied that significant detriment to the proper planning of pharmaceutical services would result from a grant of the application.

Regulation 18(2)(a)(ii)

7.25 The Committee had regard to

> *"(a) whether it is satisfied that granting the application would cause significant detriment to— …*
>
> > *(ii) the arrangements NHS England has in place for the provision of pharmaceutical services in that area"*

7.26 Whilst reference is made in the Commissioner's decision to Well Pharmacy stating that they had coped with the increase in dispensing the Committee noted the Commissioner's view that there was no suggestion that there would be significant detriment to the arrangements in place if the application was granted. The Commissioner concluded that "*granting the application would not cause significant detriment to the proper planning or arrangements in place for provision of pharmaceutical services"*.

7.27 The Committee noted the comment from the Applicant that *"The appellant makes no claim that the application should be refused in accordance with Regulation 18(2)(a), so again we assume this matter is uncontentious and we have no further comments to make"* and in response the Appellant states that *"Regulation 18(2)(a) – Significant detriment – this needs to be challenged. This was not my assertion, and I believe that the approval of this application would result in a significant detriment to us as a business".* The Committee considered the comment by the Appellant however it was of the view that this was not enough to persuade the Committee that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of an application. More robust evidence would be needed to satisfy the Committee of this finding and the Committee noted that the Appellant had not expanded upon this point further.

7.28 The Committee considered that Regulation 18(2)(a)(ii) relates to significant detriment to arrangements in place for the provision of pharmaceutical services if an application is granted. The reference to "arrangements in place for provision of pharmaceutical services" is very broad in scope. It is not limited to detriment to a particular person, class of person, patient, patient group or provider of pharmaceutical services whether this is a dispensing practice or community pharmacy. The Committee noted that no other party had sought to dispute that significant detriment would be caused.

7.29 Given the Committee's findings above, the Committee was therefore not satisfied that significant detriment to the arrangements currently in place for the provision of pharmaceutical services would result from a grant of the application.

7.30 In the absence of any significant detriment as described in Regulation 18(2)(a), the Committee was not obliged to refuse the application and went on to consider Regulation 18(2)(b).

Regulation 18(2)(b)

7.31 The Committee had regard to

"(b) whether, notwithstanding that the improvements or better access were not included in the relevant pharmaceutical needs assessment, it is satisfied that, having regard in particular to the desirability of—

(i) there being a reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB (taking into account also NHS England's duties under sections 13I and 13P of the 2006 Act (duty as to patient choice and duty as respects variation in provision of health services)),

(ii) people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that, in the area of the relevant HWB, are difficult for them to access (taking into account also NHS England's duties under section 13G of the 2006 Act (duty as to reducing inequalities)), or

(iii) there being innovative approaches taken with regard to the delivery of pharmaceutical services (taking into account also NHS England's duties under section 13K of the 2006 Act (duty to promote innovation)),

granting the application would confer significant benefits on persons in the area of the relevant HWB which were not foreseen when the relevant pharmaceutical needs assessment was published"

Regulation 18(2)(b)(i) to (iii)

7.32 The Committee had regard to the location of the existing pharmacies and GP surgeries as provided on the maps by the Commissioner, which had not been disputed by any party.

7.33 The Committee noted that the application before it was to open a new pharmacy following the closure of the Boots pharmacy which had previously been located at the Leatside Health Centre. The Committee was of the view that the closure of a pharmacy did not mean that a new pharmacy should automatically be granted. The Committee noted that there was no dispute between the parties that there are currently two pharmacies located in Totnes; the Well pharmacy which is located in the town centre on Fore Street and the Morrisons pharmacy located at the entrance to the Morrisons supermarket. The Committee further noted that there is no dispute between the parties

with regard to the distance to these pharmacies from the proposed location within the vicinity of the Leatside Health Centre.

7.34 The Committee noted that in addition to the pharmacies in Totnes there is also pharmaceutical provision located approximately 6 miles away, however no details of this had been provided by any party. The Committee was of the view that this would not be accessible for those who accessed pharmaceutical services on foot, however for those who did have access to private transport or used public transport there was no information provided to demonstrate that they were unable to access these pharmacies.

7.35 The Committee noted that the information provided concentrated on the access to the existing pharmacies in Totnes itself. The Committee noted from the Commissioner's site visit report that both Well and Morrisons are approximately 0.3 miles from the proposed site.

7.36 The Committee noted the Commissioner's comprehensive site visit report and that it had been circulated to all parties as part of the appeal process.

7.37 The Committee noted the comments from the Applicant that there may be some who may not wish to use the shortest route to get to Morrisons due to the tree lined paths as well as the lack of lighting. The Committee noted however that the site visit report, as well as parties, state that there is an alternative route for those on foot. It was noted that whilst this route involved crossing the A385/Station Road, there were light controlled crossing as well as a zebra crossing, islands and dropped kerbs. The Committee noted that the site visit report confirmed that the Morrisons pharmacy is located at the entrance to the store and patients do not need to enter Morrisons to access the pharmacy. The site visit had confirmed *"This alternative walking route is around 0.3 miles and takes 8 minutes to walk. It is level and there are pavements to follow."*

7.38 The Committee was mindful that very little information had been provided as to where patients may commence their journey, however it was noted that the Health Centre is located on the edge of an industrial estate and there was limited information provided with regard to housing in the area. The Committee was of the view that for those who did access the Health Centre on foot, they would be aware of the various paths and routes to enable them to get to the Health Centre, therefore it stood to reason that they would also be able to make their way to either the town centre or Morrisons where they would be able to access pharmaceutical provision.

7.39 The Committee noted that the site visit report had also detailed the journey to Well pharmacy, which is located in Fore Street, in the town centre. The Committee noted the comments from the Applicant with regard to the closure of Fore Street, however it was mindful that this was not a permanent closure and roadworks of any description could happen at any time and that this was not a reason to state that there was not reasonable choice of pharmaceutical services or that access was such that a new pharmacy contract should be granted.

7.40 The site visit report again gave two options for those accessing pharmaceutical services at Well on foot, one of which is a pedestrian route. The Committee noted that the site visit report states "*the walk is level and is approximately 0.3 miles taking around 7 minutes to walk"*. Again, the Committee noted that the route involved using dropped kerbs and well lit, maintained pavements.

7.41 The Committee noted the comments from the Applicant with regard to the topography of the area and the "steep hill", however the information contained in the site visit appeared to contradict this as it stated "…*there is no real incline …"* and whilst it does state "*… the path behind the fire station is a bit more uneven than the one to the*

A385…" it also confirms that the walk is "*level and there are pavements to follow."* The Committee also noted the photographs provided by both parties as well as in the site visit report and that the pavements appear to be in good order with raised kerbs, well maintained with street lights and appropriate assisted crossing points where required.

7.42 The Committee noted that there had been very little information provided with regard to bus services in the area in the original application form or the Commissioner's decision letter. The Appellant had provided a copy of a map showing the bus routes in and around Totnes with their appeal, which showed that the B1B and B2F go directly past the Health Centre, which was confirmed by the Applicant. The Committee noted the comments from the Applicant that the other bus routes did not stop at the Health Centre and would require patients to walk to them which the Applicant stated involved a walk that was further than the walk to the existing pharmacies in Totnes. The Committee noted the comments with regard to the times of the buses, however was mindful that this was within a semi-rural setting. The Committee was mindful that those who did use public transport, especially if they were using it to access medical provision in the area, would be aware of the services and times. The Committee noted that no further information had been provided with regard to the other bus routes in the area or the cost of using the service. The Committee found it difficult to assess the extent to which patients were using public transport but was of the view that there was nothing provided to demonstrate that for those who were reliant on public transport that they were currently having difficulties accessing the existing pharmaceutical provision in the area of the HWB.

7.43 For those who had access to private transport, the Committee noted the comments from the Applicant with regard to car ownership in the area and that 23.5% have no access to a car or van and that this is the same as the national average. The Committee noted the undisputed comments in the PNA with regard to those who do have access to private transport that *"100% of households are within a 15 minute drive to a pharmacy on a weekday"*. The Committee also noted the comments from parties with regard to car parking and whilst there was some dispute as to whether there would always be spaces in the Morrisons car park, the Committee noted the availability of other parking in the town centre including at Victoria Street. The Committee also noted the comments in the Commissioner's site visit report which states "*Fore Street is one way and there is street parking on one side of the road. At the rime [sic] of the visit some spaces were taken but there were some free. There is a disabled space directly outside of Well."* The Committee further noted the undisputed comments with regard to the time and distance taken to access the existing pharmacies from the Health Centre by car which was very short. Apart from the comments with regard to the potential issues with the Morrisons car park, the Committee noted that there was very little information provided with regard to accessing pharmacies by car and was also mindful of other pharmaceutical provision which is located approximately 6 miles away that can be accessed by those who have private transport. The Committee was mindful of the relatively high car ownership in the area and concluded that for those who did have access to private transport there was nothing provided by the Applicant to demonstrate that those who did have access to private transport were currently having difficulties in accessing the existing pharmaceutical provision in the area of the HWB.

7.44 The Committee noted the information provided by the Applicant with regard to the unplanned closure of the Appellant's pharmacy in Totnes as well as the various complaints with regard to service provision at both of the pharmacies. The Committee also noted the support from the patients of the Leatside Health Centre including various councillors and the local MP. The Committee noted the comments from the Appellant regarding the unplanned closure and confirmed that this had been due to a flood in the premises which had been a one-off event and was not something which happened on a regular basis. The Committee was mindful, and noted the comments from the Appellant in this regard, that the transition following the closure of the Boots pharmacy had led to an increase in demand for pharmaceutical services but there was nothing

provided to demonstrate that the existing provision in the area was not able to cope with the increase in demand now that this had plateaued following the initial spike.

7.45 The Committee was of the view that general performance issues should not be the only reason that a new pharmacy is granted. It is the ICB's role as commissioner of pharmaceutical services to act on reports of negative service and unplanned temporary suspension of services. The Committee considered that performance issues should not be a reason to completely discount the existence of a pharmacy when considering whether there is reasonable choice, but that continued ongoing problems and complaints will affect an individual's decision whether to make the journey to that pharmacy. The Committee noted that the Applicant was relying on comments from those who were registered with the Leatside Health Centre but was unsure how these views and comments had been sought.

7.46 Taking all of the above into consideration, the Committee was of the view that there is already reasonable choice with regard to obtaining pharmaceutical services in the area of the relevant HWB, such that it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits by way of physical access on persons.

7.47 In considering Regulation 18(2)(b)(ii) the Committee reminded itself that it was required to address itself to people who share a protected characteristic under the Equality Act 2010 (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation) having access to services that meet specific needs for pharmaceutical services that, in the relevant area, are difficult for them to access. In considering 18(2)(b)(ii), the Committee noted the limited information provided by the Applicant by way of general statements for those residing in Totnes. There was reference to those who due to age, illness/disability share a protected characteristic, however the information regarding those who share a protected characteristic and the pharmaceutical services they need was limited. The Committee was mindful that pharmaceutical services, especially other essential services apart from the dispensing of prescriptions, which can be delivered, may be difficult to access for people with protected characteristics based on age and disability and whilst the Committee accepted that there were always people in an area who share a protected characteristic, there was no information provided as to why those with a protected characteristic were currently experiencing any difficulties in accessing services. The Committee was therefore not satisfied that, having regard to the desirability of people who share a protected characteristic having access to services that meet specific needs for pharmaceutical services that are difficult for them to access, granting the application would confer significant benefits on persons.

7.48 In considering Regulation 18(2)(b)(iii) the Committee had regard to the desirability of innovative approaches to the delivery of pharmaceutical services. In doing so, the Committee would consider whether there was something more over and above the usual delivery of pharmaceutical services that might be expected from all pharmacies, some 'added value' on offer at the location. The Committee noted that whilst the Applicant had made a passing reference to innovation they had confirmed that they were not relying on innovation in this application. The Committee was not satisfied that, having regard to the desirability of there being innovative approaches taken with regard to the deliverability of pharmaceutical services, granting the application would confer significant benefits on persons.

Regulation 18(2)(b) generally

7.49 The Committee noted that the Applicant was proposing to open for 53 hours a week of which 40 would be core hours. The Committee noted that there would be provision of pharmaceutical services from 8am to 6pm Monday to Friday with core hours being from 8am to 12noon and 2pm to 6pm. The Applicant was proposing to open on a Saturday

morning from 9am to 12noon with all of these hours being supplementary. The Committee noted that the Applicant was not proposing any hours, either core or supplementary on a Saturday afternoon or a Sunday.

7.50 Whilst the Committee noted that the Applicant was proposing to open slightly earlier than the current provision in the area, which it said was to mirror the opening hours of the surgery, there was no information provided to demonstrate that there was an unmet need for pharmaceutical provision at such times. The Committee noted the undisputed information contained within the PNA with regard to opening hours in the area of the HWB as set out at paragraph 7.17 above. The Committee was of the view that there was no information provided to support a finding that pharmaceutical services are not currently provided at such times as needed and therefore it was not satisfied that, having regard to the desirability of there being a reasonable choice with regard to obtaining services, granting the application would confer significant benefits (in relation to opening hours) on persons.

7.51 The Committee has considered whether there are any other factors that would confer significant benefits including on patients who share protected characteristics. The Committee had regard to the need to eliminate discrimination and advance equality of opportunity and foster good relations between these patients and those who do not share their protected characteristics.

7.52 The Committee was of the view that in accordance with Regulation 18(2)(b) the granting of this application would not confer significant benefits on persons in the area of the HWB which were not foreseen when the PNA was published.

Other considerations

7.53 Having determined that Regulation 18(2)(b) had not been satisfied, the Committee did not need to have regard to Regulation 18(2)(c) to (e).

7.54 No deferral or refusal under Regulation 18(2)(f) was required in this case.

7.55 The Committee had regard to Regulation 18(2)(g) and found that it did not apply in this case.

7.56 The Committee considered whether there were any further factors to be taken into account and concluded that there were not.

7.57 The Committee was not satisfied that the information provided demonstrates that there is difficulty in accessing current pharmaceutical services such that a pharmacy at the proposed site would provide better access to pharmaceutical services.

7.58 Pursuant to paragraph 9(1)(a) of Schedule 3 to the Regulations, the Committee may:

7.58.1 confirm the Commissioner's decision;

7.58.2 quash the Commissioner's decision and redetermine the application;

7.58.3 quash the Commissioner's decision and, if it considers that there should be a further notification to the parties to make representations, remit the matter to the Commissioner.

7.59 In those circumstances as the Committee has reached a different conclusion to the Commissioner, the Committee determined that the decision of the Commissioner must be quashed.

7.60 The Committee went on to consider whether there should be a further notification to the parties detailed at paragraph 19 of Schedule 2 of the Regulations to allow them to make representations if they so wished (in which case it would be appropriate to remit the matter to the Commissioner) or whether it was preferable for the Committee to redetermine the application.

7.61 The Committee noted that representations on Regulation 18 had been sought from parties by the Commissioner and representations had already been made by parties to the Commissioner in response. These had been circulated and seen by all parties as part of the processing of the application by the Commissioner. The Committee further noted that when the appeal was circulated representations had been sought from parties on Regulation 18.

7.62 The Committee concluded that further notification under paragraph 19 of Schedule 2 would not be helpful in this case.

8 DECISION

8.1 The Pharmacy Appeals Committee ("Committee"), appointed by NHS Resolution, quashes the decision of the Commissioner, for the reasons given above, and redetermines the application.

8.2 The Committee concluded that it was not required to refuse the application under the provisions of Regulation 31.

8.3 The Committee has considered whether the granting of the application would cause significant detriment to proper planning in respect of the provision of pharmaceutical services in the area covered by the HWB, or the arrangements in place for the provision of pharmaceutical services in that area and is not satisfied that it would;

8.4 The Committee determined that the application should be refused on the following basis:

8.4.1 In considering whether the granting of the application would confer significant benefits, the Committee determined that –

8.4.1.1 there is already a reasonable choice with regard to obtaining pharmaceutical services;

8.4.1.2 there is no evidence of people sharing a protected characteristic having difficulty in accessing pharmaceutical services; and

8.4.1.3 there is no evidence that innovative approaches would be taken with regard to the delivery of pharmaceutical services;

8.4.2 Having taken these matters into account, the Committee is not satisfied that granting the application would confer significant benefits as outlined above that would secure improvements or better access to pharmaceutical services.

Case Manager
Primary Care Appeals